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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 282

HARRY J. AMELL, ET AL., PETITIONERS,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

PETITION FOR CERTIORARI FILED JUNE 26, 1951.
CERTIORARI GRANTED OCTOBER 22, 1951.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 282

HARRY J. AMELL, ET AL., PETITIONERS,

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UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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Plaintiffs,

v.

The United States.

PETITION—Filed November 12, 1964

[fol. 2] *To the Honorable, the United States Court of Claims*:

For a First Cause of Action

1. This Court has jurisdiction under 28 U. S. C. Section 1491.

2. Petitioners are citizens of the United States and at all times hereinafter mentioned were licensed marine engineer officers employed aboard vessels operated and controlled by the Military Sea Transportation Service, Atlantic Area (hereinafter referred to as "MSTS"), a subsidiary agency of the Department of Navy, Defense Department, United States of America.

3. Section 202(8) of the Classification Act of 1949, 5 U. S. C. 1082(8) provides:

> "§ 1082. Positions exempt
>
> (8) officers and members of crews of vessels, whose compensation shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry."

4. The prevailing rates and practices in the maritime industry are established by collective bargaining agreements between commercial maritime carriers and maritime labor unions.

5. The prevailing rates and practices for marine engineers are established by collective bargaining agreements between commercial maritime carriers and the National Marine Engineers' Beneficial Association (hereinafter called "NMEBA").

6. Pursuant to such collective bargaining agreements between commercial maritime carriers and NMEBA, wage [fol. 3] reviews were conducted, effective June 15, 1962, June 15, 1963 and June 13, 1964, in which 3½ percent pay increases for marine engineers were made available by the carriers.

7. Pursuant to the terms of said wage review agreements, the members of the Union employed by the commercial carriers decided to put the 3½ percent pay increases effective June, 1962 and June, 1963 into the MEBA Pension and Welfare Fund, and to put the 3½ percent pay increase for June, 1964 into monthly wages.

8. The aforesaid constituted prevailing rates and practices in the maritime industry for maritime engineers.

9. MSTS has failed and refused to pay to its licensed marine engineers, including the petitioners, the two 3½ percent pay increases received by licensed marine engineers employed on commercial carriers effective June 15, 1962 and June 15, 1963, although such payment was duly demanded on behalf of petitioners.

10. The refusal of MSTS to grant the aforesaid pay increases is in violation of 5 U. S. C. 1082(8).

For a Second Cause of Action

11. Petitioners repeat and reallege all of the facts set forth in the First Cause of Action as if set forth in full herein.

12. Petitioners are members of District No. 1 National Marine Engineers' Beneficial Association.

13. The NMEBA is recognized as the exclusive representative of all civilian licensed marine engineers employed by MSTS, Atlantic Area.

14. Article XII of the Agreement negotiated between the Commander, MSTS, Atlantic Area and the NMEBA pursuant to Executive Order 10988, and Civilian Marine Personnel Instruction 531.1-2 provide that "prevailing pay [fol. 4] rates and practices in the maritime industry are ascertained by analysis of * * * (2) agreements and contracts between commercial carriers and maritime labor unions."

15. The refusal of MSTS to grant the pay increases of June 15, 1962 and June 15, 1963 is in violation of the aforesaid agreement and of CMPI 531.

16. Petitioners have exhausted all administrative remedies.

17. Petitioners demand an accounting for computation of the amount of damages to which they are entitled.

18. Upon information and belief, petitioners claim damages totalling $100,000.

Wherefore, petitioners demand judgment against the United States in the amount of $100,000 or an accounting and judgment directing payment to petitioners of the two 3½ percent pay increases due June 15, 1962 and June 15, 1963.

Dated: November 3, 1964.

Lee Pressman, 50 Broadway, New York, N. Y. 10004, Attorney for Petitioners;

David Scribner, Joan Kiok, 50 Broadway, New York, N. Y. 10004, Of Counsel.

Harry J. Amell, a petitioner, Jakeway Road, Hudson Park, New York.

[fol. 5]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

DEFENDANT'S MOTION TO TRANSFER OR DISMISS—
Filed December 22, 1964

Defendant moves the Court for an order transferring this action to the United States District Court for the Southern District of New York or other Districts elected by petitioners or, in the alternative, for an order dismissing the petition. The ground for this motion is that it appears from the face of the petition that plaintiffs' claims are for seamen's wages allegedly earned in maritime employment aboard vessels owned and operated by the United States and are thus a matter of admiralty and maritime jurisdiction

justicable exclusively in the district courts under the Admiralty Claims Acts, 46 U.S.C. 741-752, 781-790.

* * * * * * *

[fol. 11] Respectfully submitted.

John W. Douglas, Assistant Attorney General, Civil Division.

Leavenworth Colby, Allen Van Emmerik, Attorneys, Admiralty & Shipping Section, Department of Justice.

[fol. 13]

IN THE UNITED STATES COURT OF CLAIMS

No. 387-64

[Title omitted]

OBJECTION TO DEFENDANT'S MOTION TO TRANSFER OR DISMISS—Dated February 19, 1965

Plaintiffs object to the granting of defendant's motion to transfer or dismiss, filed on December 22, 1964, on the ground that this Court has exclusive jurisdiction of claims for overtime wages by government employees when the amount exceeds $10,000.00.

The attached Memorandum is submitted in support of this objection.

Dated: February 19, 1965

Lee Pressman, Attorney for Plaintiffs, Office and P. O. Address: 50 Broadway, New York, N. Y. 10004.

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IN THE UNITED STATES COURT OF CLAIMS

No. 387-64

HARRY J. AMELL, *et al.*,

v.

THE UNITED STATES.

ORDER DENYING MOTION TO DISMISS AND TRANSFERRING CASE TO U. S. D. C. S. D. N. Y.—April 12, 1965

This case comes before the court on defendant's motion to transfer or dismiss. Upon consideration thereof, together with the opposition thereto, and without oral argument, on the basis of *Wingate* v. *United States,* Ct. Cl. No. 147-61; *Alesiani, et al.* v. *United States,* Ct. Cl. No. 266-63; and *Afnese* v. *United States,* Ct. Cl. No. 294-64,

It Is Ordered that defendant's motion to dismiss be and the same is denied, and that defendant's motion to transfer be and the same is granted in that this case is transferred to the United States District Court for the Southern District of New York.

The clerk will forward to the clerk of said court a certified copy of the record made here.

By the Court

Wilson Cowen, Chief Judge.

[fol. 44] Clerk's certificate to foregoing transcript (omitted in printing).

[fol. 45]

IN THE UNITED STATES COURT OF CLAIMS

No. 423-64

1. JAMES J. ALLWEIN,
2. RAYMOND H. BELISLE,
3. FRANK H. COLLINS,
4. THOMAS D. OUTTEN,
5. JOSEPH E. HART,
6. RANDALL D. HARTLEY,
7. WILLIAM G. HILL,
8. GEORGE E. HUGHES,
9. JAMES J. LEE,
10. EARL PAYNE,
11. JUNIOR A. TYLER,

Petitioners,

v.

THE UNITED STATES.

PETITION—Filed December 23, 1964

To the Honorable, the United States Court of Claims:

For a First Cause of Action

1. Petitioners are citizens of the United States and at all times hereinafter mentioned, were and are employed by the United States as boat group employees and stationed at the Naval Ordnance Laboratory Test Facility at Fort Lauderdale, Florida.

2. The Naval Ordnance Laboratory Test Facility is an agency of the Department of the Navy, Defense Department, United States of America.

[fol. 46] 3. This Court has jurisdiction under 28 U. S. C. Section 1491.

4. Petitioners, as a condition of their employment, have been and are required to work, and did work, and continue to work, eight and one-half (8½) hours per day.

5. Petitioners have not been and are not compensated for such work in excess of eight (8) hours per day.

6. Petitioners have been required to work such overtime periods for various periods of time, depending upon the length of time of their individual employments.

7. Upon information and belief, petitioners' compensation is fixed and adjusted from time to time in accordance with prevailing rates and practices in the maritime industry by a wage board or similar administrative authority.

8. The Federal Employees Pay Act of 1945, 5 U. S. C. 902(c) exempts from coverage (with certain exceptions) " * * * employees whose basic compensation is fixed and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority * * * ."

9. One of the stated exceptions to said exemption is 5 U. S. C. 913 which provides for payment of overtime to wage board employees in accordance with the provision of Section 673(c) of 5 U. S. C. and further provides for the method of computing such overtime on the basis of time and one-half as follows:

> "Employees whose basic rate of compensation is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose shall be entitled to overtime pay in accordance with the provisions of section 673c of this title. The rate of compensation for [fol. 47] each hour of overtime employment of any such employee shall be computed as follows:
>
> (a) If the basic rate of compensation of the employee is fixed on an annual basis, divide such basic rate of compensation by two thousand and eighty and multiply the quotient by one and one-half; and
>
> (b) If the basic rate of compensation of the employee is fixed on a monthly basis, multiply such basic

rate of compensation by twelve to derive a basic annual rate of compensation, divide such basic annual rate of compensation by two thousand and eighty, and multiply the quotient by one and one-half."

10. 5 U. S. C. 673(c) (as amended by Public Law 87-581 (1962)) provides in pertinent part:

"Section 673(c) * * * : Provided further, That overtime work in excess of eight hours per day or in excess of forty hours per week shall be compensated for at not less than time and one-half the basic rate of compensation * * *."

11. Petitioners are entitled to damages computed for each petitioner in accordance with the provisions of 5 U. S. C. Section 913.

For a Second Cause of Action

12. Petitioners repeat and reallege all of the facts set forth in the First Cause of Action as if set forth in full herein.

13. Naval Civilian Personnel Instruction 610.2-1k provides:

"Normally, during each 8-hour shift employees will be allowed a specified period of time off to eat lunch. A lunch period is non-work time for which neither basic nor overtime compensation is payable. When a lunch period is set aside, the length of the shift or workday will be extended by the length of the non-work period. [fol. 48] In some types of jobs it may not be administratively desirable to allow a specified period of time off for lunch. For example, it may be desirable to avoid overlapping shifts when night shifts are employed or the job may require the constant attention or availability of the employee without being relieved for lunch. In these types of cases, it is proper to schedule shifts without a lunch period. Under such circumstances, the employees may be permitted to eat

lunch on the job when it is possible to do so without stopping or interrupting his work. When no lunch period is scheduled, the schedule shall so indicate."

14. Petitioners were not allowed a specified period of non-work time to eat lunch and were required to work overtime in excess of eight hours per day for various periods of time depending upon their individual lengths of employment.

15. Petitioners are entitled to damages computed for each petitioner in accordance with the provisions of 5 U. S. C. Section 913.

For a Third Cause of Action

16. Petitioners repeat and reallege all of the facts set forth in the First and Second Causes of action as if set forth in full herein.

17. The Classification Act of 1949, 5 U. S. C. 1082(8) exempts:

"(8) Officers and members of crews of vessels, whose compensation shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry * * *."

18. The prevailing rates and practices for employees in the maritime industry may be determined from the collective bargaining agreements between the maritime unions and various shipping companies.

[fol. 49] 19. The prevailing rates and practices in the maritime industry require overtime pay for all work in excess of eight hours per day.

20. Petitioners are entitled to damages computed for each petitioner in accordance with the provisions of 5 U. S. C. Section 913.

21. Petitioners have exhausted all administrative remedies.

22. Petitioners demand an accounting for computation of the overtime worked and payment therefor.

23. Upon information and belief petitioners claim damages totalling $20,000.00.

24. Petitioners will be required to work overtime during the time this action is pending and will be entitled to recover for such overtime until final judgment in this case.

Wherefore petitioners demand judgment against the United States in the amount of $20,000.00, plus such other and further amount as may be due petitioners on the day of judgment.

Dated: December 18, 1964.

Lee Pressman, 50 Broadway, New York, N. Y. 10004, Attorney for Petitioners;

David Scribner, Joan Kiok, 50 Broadway, New York, N. Y. 10004, Of Counsel.

Earl Payne, a petitioner, 1106 N. W. 13th Court, Fort Lauderdale, Fla.

[fol. 50]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

DEFENDANT'S MOTION TO TRANSFER OR DISMISS—
Filed January 26, 1965

Defendant moves the Court for an order transferring this action to the United States District Court for the Southern District of Florida or, alternatively, for a dismissal of the action. The ground for this motion is that it appears from the face of the petition that plaintiffs' claims are for seamen's wages allegedly earned in maritime employment aboard vessels owned and operated by the United States and are thus matters of admiralty and maritime jurisdiction

justiciable exclusively in the district courts under the Admiralty Claims Acts, 46 U.S.C. 741-752, 781-790.

* * * * * * *

[fol. 51] Respectfully submitted,

John W. Douglas, Assistant Attorney General, Civil Division.

Leavenworth Colby, Allen Van Emmerik, Attorneys, Admiralty & Shipping Section, Department of Justice.

[fol. 52]

IN THE UNITED STATES COURT OF CLAIMS

No. 423-64

[Title omitted]

OBJECTION TO DEFENDANT'S MOTION TO TRANSFER OR DISMISS —Dated February 23, 1965

Plaintiffs object to the granting of defendant's motion to transfer or dismiss, filed on January 26, 1965, on the ground that this Court has exclusive jurisdiction of claims for overtime wages by government employees when the amount exceeds $10,000.00.

The attached Memorandum is submitted in support of this objection.

Dated: February 23, 1965

Lee Pressman, Attorney for Plaintiffs, Office and P. O. Address: 50 Broadway, New York, N. Y. 10004.

[fol. 53]

IN THE UNITED STATES COURT OF CLAIMS

No. 423-64

JAMES J. ALLWEIN, et al.,

v.

THE UNITED STATES.

ORDER DENYING MOTION TO DISMISS AND TRANSFERRING CASE TO U. S. D. C., S. D. FLORIDA—April 12, 1965

This case comes before the court on defendant's motion to transfer or dismiss. Upon consideration thereof, together with the opposition thereto, and without oral argument, on the basis of *Wingate* v. *United States,* Ct. Cl. No. 147-61; *Alesiani, et al.* v. *United States,* Ct. Cl. No. 266-63; and *Afnese* v. *United States,* Ct. Cl. No. 294-64,

It Is Ordered that defendant's motion to dismiss be and the same is denied, and that defendant's motion to transfer be and the same is granted in that this case is transferred to the United States District Court for the Southern District of Florida.

The clerk will forward to the clerk of said court a certified copy of the record made here.

By the Court

Wilson Cowen, Chief Judge.

[fol. 54] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 55]

IN THE UNITED STATES COURT OF CLAIMS

No. 269-64

1. JACK E. BENNETT,
2. STANLEY R. BROOKS,
3. ROY S. COGGESHALL,
4. JOHN W. ENNIS,
5. THOMAS W. GILHAM,
6. HARVEY J. MARTS,
7. EARL C. McCOID,
8. CHARLES R. ROOF,
9. JOHN H. ST. GEORGE,
10. RALPH J. VANDIVER,
11. FRANKLIN W. WARREN,

on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE UNITED STATES.

PETITION—Filed August 17, 1964

To the Honorable, the United States Court of Claims:

For a First Cause of Action

1. Petitioners are citizens of the United States and at all times hereinafter mentioned, were and are employed by the United States as boat group employees and stationed at the Naval Ordnance Laboratory Test Facility at Fort Lauderdale, Florida.

2. The Naval Ordnance Laboratory Test Facility is an agency of the Department of the Navy, Defense Department, United States of America.

[fol. 56] 3. Petitioners bring this action for themselves and on behalf of others similarly situated, the others being likewise employed by the Naval Ordnance Laboratory Test Facility at Fort Lauderdale, Florida.

4. This Court has jurisdiction under 28 U. S. C. Section 1491(2) and (3).

5. Petitioners, as a condition of their employment, have been and are required to work, and did work, and continue to work, eight and one-half (8½) hours per day.

6. Petitioners have not been and are not compensated for such work in excess of eight (8) hours per day.

7. Petitioners have been required to work such overtime periods for various periods of time, depending upon the length of time of their individual employments.

8. Upon information and belief, petitioners' compensation is fixed and adjusted from time to time in accordance with prevailing rates and practices in the maritime industry by a wage board or similar administrative authority.

9. The Federal Employees Pay Act of 1945, 5 U. S. C. 902(e) exempts from coverage (with certain exceptions) "* * * employees whose basic compensation is fixed and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority * * *."

10. One of the stated exceptions to said exemption is 5 U. S. C. 913 which provides for payment of overtime to wage board employees in accordance with the provision of Section 673(c) of 5 U. S. C. and further provides for the method of computing such overtime on the basis of time and one-half as follows:

> "Employees whose basic rate of compensation is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates [fol. 57] by wage boards or similar administrative authority serving the same purpose shall be entitled to overtime pay in accordance with the provisions of section 673c of this title. The rate of compensation for each hour of overtime employment of any such employee shall be computed as follows:

(a) If the basic rate of compensation of the employee is fixed on an annual basis, divide such basic rate of compensation by two thousand and eighty and multiply the quotient by one and one-half; and

(b) If the basic rate of compensation of the employee is fixed on a monthly basis, multiply such basic rate of compensation by twelve to derive a basic annual rate of compensation, divide such basic annual rate of compensation by two thousand and eighty, and multiply the quotient by one and one-half."

11. 5 U. S. C. 673(c) (as amended by Public Law 87-581 (1962)) provides in pertinent part:

"Section 673(c) * * * : Provided further, That overtime work in excess of eight hours per day or in excess of forty hours per week shall be compensated for at not less than time and one-half the basic rate of compensation * * *."

12. Petitioners are entitled to damages computed for each petitioner in accordance with the provisions of 5 U. S. C. Section 913.

For a Second Cause of Action

13. Petitioners repeat and reallege all of the facts set forth in the First Cause of Action as if set forth in full herein.

14. Naval Civilian Personnel Instruction 610.2-1k provides:

"Normally, during each 8-hour shift employees will be allowed a specified period of time off to eat lunch. [fol. 58] A lunch period is non-work time for which neither basic nor overtime compensation is payable. When a lunch period is set aside, the length of the shift or workday will be extended by the length of the non-work period. In some types of jobs it may not

be administratively desirable to allow a specified period of time off for lunch. For example, it may be desirable to avoid overlapping shifts when night shifts are employed or the job may require the constant attention or availability of the employee without being relieved for lunch. In these types of cases, it is proper to schedule shifts without a lunch period. Under such circumstances, the employees may be permitted to eat lunch on the job when it is possible to do so without stopping or interrupting his work. When no lunch period is scheduled, the schedule shall so indicate."

15. Petitioners were not allowed a specified period of non-work time to eat lunch and were required to work overtime in excess of eight hours per day for various periods of time depending upon their individual lengths of employment.

16. Petitioners are entitled to damages computed for each petitioner in accordance with the provisions of 5 U. S. C. Section 913.

For a Third Cause of Action

17. Petitioners repeat and reallege all of the facts set forth in the First and Second Causes of Action as if set forth in full herein.

18. The Classification Act of 1949, 5 U. S. C. 1082(8) exempts:

"(8) Officers and members of crews of vessels, whose compensation shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry * * *."

[fol. 59] 19. The prevailing rates and practices for employees in the maritime industry may be determined from the collective bargaining agreement between the maritime unions and various shipping companies.

20. The prevailing rates and practices in the maritime industry require overtime pay for all work in excess of eight hours per day.

21. Petitioners are entitled to damages computed for each petitioner in accordance with the provisions of 5 U. S. C. Section 913.

22. Petitioners have exhausted all administrative remedies.

23. Petitioners demand an accounting for computation of the overtime worked and payment therefor.

24. Upon information and belief petitioners claim damages totalling $60,000.00.

25. Petitioners will be required to work overtime during the time this action is pending and will be entitled to recover for such overtime until final judgment in this case.

Wherefore petitioners demand judgment against the United States in the amount of $60,000.00, plus such other and further amount as may be due petitioners on the day of judgment.

Dated: August 10, 1964.

Lee Pressman, David Scribner, 50 Broadway, New York 4, New York, Attorneys for Petitioners.

Charles R. Roof, a Petitioner, 236 Southwest 23rd Street, Fort Lauderdale, Florida 33315.

[fol. 60]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

DEFENDANT'S MOTION TO STRIKE PART OF PLAINTIFFS' PETITION—Filed August 21, 1964
—Allowed September 3, 1964

Defendant moves the Court to strike from plaintiffs' petition the words "and all others similarly situated" which

appears in the caption of plaintiffs' petition. Rule 24 of the Rules of this Court require that every action be prosecuted in the name of the real party in interest. The named persons herein are not the real parties in interest with respect to the rights of all others similarly situated.

Rule 15(a) of this Court requires that a petition include the names of all parties. Plaintiffs' petition fails in this respect in that plaintiffs attempt to bring within the Court's jurisdiction unnamed persons who may never be identified. Such a procedure is not permitted by the Rules of this Court.

This caption in plaintiffs' petition is further objectionable in that this Court cannot grant a money judgment to such unnamed persons. What plaintiffs are attempting to do is to have this Court render a declaratory judgment which would affect these unnamed persons. However, it is well-[fol. 61] settled that this Court cannot grant such relief. *United States Rubber Company* v. *United States,* 142 C. Cls. 42, 55 (1958).

Accordingly, for the above-stated reasons, defendant requests that its motion be granted, and the words "and all others similarly situated" be stricken from plaintiffs' petition herein.

Respectfully submitted,

John W. Douglas, Assistant Attorney General, Civil Division.

Robert R. Donlan, Attorney, Civil Division, Department of Justice.

[fol. 62]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

DEFENDANT'S ANSWER—Filed October 16, 1964

For its answer to plaintiffs' petition, defendant admits, denies and alleges as follows:

1. Admits the allegations contained in paragraph one.

2. Admits the allegations contained in paragraph two.

3. Defendant does not have sufficient information to form a belief with respect to the truth or the falsity of the allegations contained in paragraph three, and therefore denies same.

4. Paragraph four contains a conclusion of law not requiring an answer, but to the extent that said conclusion may be deemed an allegation of material fact it is denied.

5. Denies the allegations contained in paragraph five, and alleges that plaintiffs worked Monday through Friday, from 7:30 a.m. to 4:00 p.m., including a non-work period of thirty minutes for lunch.

6. Denies the allegations contained in paragraph six, and alleges that plaintiffs were paid overtime rates for all hours worked in excess of eight hours per day.

7. Denies the allegations contained in paragraph seven.

8. Admits the allegations contained in paragraph eight.

[fol. 63] 9. Paragraph nine contains a conclusion of law not requiring an answer, but to the extent that said conclusion may be deemed an allegation of material fact it is denied.

10. Paragraph ten contains a conclusion of law not requiring an answer, but to the extent that said conclusion may be deemed an allegation of material fact it is denied.

11. Paragraph eleven contains a conclusion of law not requiring an answer, but to the extent that said conclusion may be deemed an allegation of material fact it is denied.

12. Paragraph twelve contains a conclusion of law not requiring an answer, but to the extent that said conclusion may be deemed an allegation of material fact it is denied.

13. Paragraph thirteen is a procedural allegation not requiring an answer, but to the extent that it may be deemed an allegation of material fact it is denied.

14. Admits the allegations contained in paragraph fourteen.

15. Denies the allegations contained in paragraph fifteen, and alleges that each plaintiff received a thirty-minute lunch period during each workday.

16. Paragraph sixteen contains a conclusion of law not requiring an answer, but to the extent that said conclusion may be deemed an allegation of material fact it is denied.

17. Paragraph seventeen is a procedural allegation not requiring an answer, but to the extent that it may be deemed an allegation of material fact it is denied.

[fol. 64] 18. Paragraph eighteen contains a conclusion of law not requiring an answer, but to the extent that said conclusion may be deemed an allegation of material fact it is denied.

19. Denies the allegations contained in paragraph nineteen.

20. Defendant does not have sufficient information to form a belief with respect to the truth or the falsity of the allegations contained in paragraph twenty, and therefore denies same.

21. Paragraph twenty-one contains a conclusion of law not requiring an answer, but to the extent that said conclusion may be deemed an allegation of material fact it is denied.

22. Paragraph twenty-two contains a conclusion of law not requiring an answer, but to the extent that said conclusion may be deemed an allegation of material fact it is denied.

23. Paragraph twenty-three is a claim for relief not requiring an answer, but to the extent that said claim may be deemed an allegation of material fact it is denied.

24. Paragraph twenty-four is a claim for relief not requiring an answer, but to the extent that said claim may be deemed an allegation of material fact it is denied.

25. Paragraph twenty-five is a claim for relief not requiring an answer, but to the extent that said claim may be deemed an allegation of material fact it is denied.

26. Defendant denies each and every allegation not specifically admitted, denied or otherwise qualified herein.

[fol. 65] First Affirmative Defense

27. Each plaintiff has been fully compensated for each hour and each workday upon which his claim is premised. Accordingly, since payment has already been made, there is no basis upon which additional payment can be made.

Second Affirmative Defense

28. Prior to his employment, each plaintiff was advised of the work conditions and the financial arrangements concerning his employment. At no time prior to the filing of this suit, except in the case of plaintiff, Charles Roof, who filed an administrative appeal on June 18, 1963, did any of the planitiffs herein make any complaints or file any protests regarding their hours of work or methods of compensation. In reliance upon the actions of plaintiffs, defendant did not undertake to change or otherwise alter its working arrangements with the plaintiffs herein. Accordingly, under these circumstances, the plaintiffs are estopped from presenting these claims.

Third Affirmative Defense

29. Each plaintiff's tour of duty and method of compensation was known to him long before the filing of this suit on August 17, 1964. However, at no time prior to the filing of this suit, except in the case of Charles Roof, who filed an administrative appeal on June 18, 1963, did any of the plaintiffs herein take any action to correct or otherwise [fol. 66] alter their tours of duty or methods of compensation. As a result of this unreasonably long delay in bringing the present action, defendant has been injured in that it has been unable to mitigate its damages, if any, or extinguish its liability by changing plaintiffs' tours of duty or methods of compensation. Accordingly, plaintiffs' claims are barred by laches.

Fourth Affirmative Defense

30. Plaintiffs' petition was filed on August 17, 1964. Accordingly, that portion of their claim which is premised upon events which occurred prior to August 17, 1958, is barred by the six-year Statute of Limitations. 28 U.S.C. 2501.

Wherefore, defendant demands judgment dismissing plaintiffs' petition herein.

John W. Douglas, Assistant Attorney General, Civil Division.

Robert R. Donlan, Attorney, Civil Division, Department of Justice.

[fol. 67]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

DEFENDANT'S MOTION TO TRANSFER OR DISMISS—Filed January 26, 1965

Defendant moves the Court for an order transferring this action to the United States District Court for the Southern District of Florida or, alternatively, for a dismissal of the action. The ground for this motion is that it appears from the face of the petition that plaintiffs' claims are for seamen's wages allegedly earned in maritime employment aboard vessels owned and operated by the United States and are thus matters of admiralty and maritime jurisdiction justiciable exclusively in the district courts under the Admiralty Claims Acts, 46 U.S.C. 741-752, 781-790.

* * * * * * *

[fol. 68] Respectfully submitted,

John W. Douglas, Assistant Attorney General, Civil Division.

Leavenworth Colby, Allen Van Emmerik, Attorneys, Admiralty & Shipping Section, Department of Justice.

[fol. 69]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

OBJECTION TO DEFENDANT'S MOTION TO TRANSFER OR DISMISS—Dated February 23, 1965

Plaintiffs object to the granting of defendant's motion to transfer or dismiss, filed on January 26, 1965, on the ground that this Court has exclusive jurisdiction of claims for overtime wages by government employees when the amount exceeds $10,000.00.

The attached Memorandum is submitted in support of this objection.

Dated: February 23, 1965.

Lee Pressman, Attorney for Plaintiffs, Office and P. O. Address: 50 Broadway, New York, N. Y. 10004.

[fol. 70]

IN THE UNITED STATES COURT OF CLAIMS

No. 269—64

JACK E. BENNETT, et al.,

v.

THE UNITED STATES.

ORDER DENYING MOTION TO DISMISS AND TRANSFERRING CASE TO U.S.D.C., S.D. FLORIDA—April 12, 1965

This case comes before the court on defendant's motion to transfer or dismiss. Upon consideration thereof, together with the opposition thereto, and without oral argument, on the basis of *Wingate* v. *United States*, Ct. Cl. No. 147-61;

Alesiani, et al. v. *United States,* Ct. Cl. No. 266-63; and *Afnese* v. *United States,* Ct. Cl. No. 294-64,

It Is Ordered that defendant's motion to dismiss be and the same is denied, and that defendant's motion to transfer be and the same is granted in that this case is transferred to the United States District Court for the Southern District of Florida.

The clerk will forward to the clerk of said court a certified copy of the record made here.

By the Court

Wilson Cowen, Chief Judge.

[fol. 71] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 72]

IN THE UNITED STATES COURT OF CLAIMS

No. 333-64

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1. CHALMERS O. DETLING, 2. FRANCIS E. JAMES, 3. SEVERT N. OLNESS, 4. MICHAEL A. ROCCO and 5. JOHN J. TARPEY, Petitioners,

v.

THE UNITED STATES.

PETITION—Filed October 6, 1964

To the Honorable, the United States Court of Claims:

For a First Cause of Action

1. This Court has jurisdiction under 28 U.S.C., Section 1491.

2. Petitioners are citizens of the United States and at all times hereinafter mentioned were employed on the dredge Essayons.

3. The dredge Essayons is operated by the Corps of Engineers, Department of the Army, Defense Department, United States of America.

4. Petitioners, as a condition of their said employment, have been and are required to work and did work and continue to work certain port watch tours of duty.

[fol. 73] 5. During said port watch tours of duty, petitioners were and are required to work 24 hours per day or 16 hours in excess of 8 hours per day.

6. Petitioners have not been and are not compensated for such overtime work in excess of 8 hours per day.

7. Upon information and belief, petitioners' compensation is fixed and adjusted from time to time in accordance with prevailing rates and practices by a wage board or similar administrative authority.

8. The Federal Employees Pay Act of 1945, 5 U.S.C. 902(c) exempts from coverage (with certain exceptions) "* * * employees whose basic compensation is fixed and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority * * *."

9. One of the stated exceptions to said exemption is 5 U.S.C. 913 which provides for payment of overtime to wage board employees in accordance with the provision of Section 673(c) of 5 U.S.C. and further provides for the method of computing such overtime on the basis of time and one-half as follows:

> "Employees whose basic rate of compensation is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose shall be entitled to overtime pay in accordance with the provisions of section 673c of this title. The rate of compensation for each hour of overtime employment of any such employee shall be computed as follows:
>
> (a) If the basic rate of compensation of the employee is fixed on an annual basis, divide such basic

[fol. 74] rate of compensation by two thousand and eighty and multiply the quotient by one and one-half; and

(b) If the basic rate of compensation of the employee is fixed on a monthly basis, multiply such basic rate of compensation by twelve to derive a basic annual rate of compensation, divide such basic annual rate of compensation by two thousand and eighty, and multiply the quotient by one and one-half."

10. 5 U.S.C. 673(c) (as amended by Public Law 87-581 (1962)) provides in pertinent part:

"Section 673(c) * * *: Provided further, That overtime work in excess of eight hours per day or in excess of forty hours per week shall be compensated for at not less than time and one-half the basic rate of compensation * * *."

11. Petitioners are entitled to be paid for an additional 16 hours of work for each 24 hour port watch tour of duty at overtime rates computed for each petitioner in accordance with the provisions of 5 U.S.C., Section 913.

For a Second Cause of Action

12. Petitioners repeat and reallege all of the facts set forth in the First Cause of Action as if set forth in full herein.

13. Army Corps of Engineers Regulations, Corps of Engineers Manual, EM690-7-102, Change 1, Paragraph 7, Subparagraph (4), dated November 17, 1961, provides in pertinent part:

"*Port Watch Practices*: (4) Port Watch personnel stand one 8-hour or two 4-hour watches per 24-hour period, as a part of their regular 40-hour tour [fol. 75] of duty, and are required to remain aboard the plant on a stand-by basis for the remainder of the port watch.

Method of Payment: 8 hours at regular rates, per 24-hour period, plus overtime for any additional time worked."

14. Under the aforesaid regulation petitioners are entitled to overtime wages for any time worked over and above 8 hours per 24-hour period.

15. The above regulation, as applied to petitioners, is in violation of 5 U.S.C., Section 673(c) and 5 U.S.C., Section 1082(7).

16. Petitioners are entitled to be paid for an additional 16 hours of work for each 24 hour port watch tour of duty at overtime rates computed in accordance with 5 U.S.C., Section 913.

For a Third Cause of Action

17. Petitioners repeat and reallege all of the facts set forth in the First and Second Causes of Action as if set forth in full herein.

18. The Classification Act of 1949, 5 U.S.C., Section 1082(7) exempts:

"employees in recognized trades or crafts, or other skilled mechanical crafts, or in unskilled, semiskilled, or skilled manual-labor occupations, and other employees including foremen and supervisors in positions having trade, craft, or laboring experience and knowledge as the paramount requirement, * * *: *Provided*, That the compensation of such employees shall be fixed and adjusted from time to time as [fol. 76] nearly as is consistent with the public interest in accordance with prevailing rates * * *."

19. Upon information and belief the prevailing rates for employees with tours of duty similar to the petitioners require overtime pay for all work in excess of 8 hours per day, or 16 hours at overtime rates per 24 hour port watch tour of duty.

20. Petitioners are entitled to be paid for an additional 16 hours of work for each 24 hour port watch tour of duty at overtime rates computed in accordance with 5 U.S.C., Section 913.

21. Petitioners have exhausted all administrative remedies.

22. Petitioners demand an accounting for computation of the overtime worked and payment therefor.

23. Upon information and belief petitioners claim damages totalling $3,000.00.

Wherefore petitioners demand judgment against the United States in the amount of $3,000.00, plus such other [fol. 77] and further amount as may be due petitioners on the day of judgment.

Dated: October 5, 1964.

Lee Pressman, 50 Broadway, New York, N. Y. 10004, Attorney for Petitioners.

David Scribner, Joan Kiok, 50 Broadway, New York, N. Y. 10004, Of Counsel.

Chalmers O. Detling, a Petitioner, 34 Classon Ave., Mastic, New York.

[fol. 78]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

DEFENDANT'S MOTION TO DISMISS OR TRANSFER—
Filed December 17, 1964

Defendant moves the Court for an order dismissing the petition or, in the alternative, for an order transferring this action to any United States District Court or Courts elected by petitioners. The ground for this motion is that it appears from the face of the petition that plaintiffs' claims are for

seamen's wages allegedly earned in maritime employment aboard vessels owned and operated by the United States and are thus a matter of admiralty and maritime jurisdiction justiciable exclusively in the district courts under the Admiralty Claims Acts, 46 U.S.C. 741-752, 781-790.

* * * * * * *

[fol. 79] Respectfully submitted,

John W. Douglas, Assistant Attorney General, Civil Division.

Leavenworth Colby, Allen Van Emmerik, Attorneys, Admiralty & Shipping Section, Department of Justice.

[fol. 80]

IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

OBJECTION TO DEFENDANT'S MOTION TO DISMISS OR TRANSFER —Dated February 18, 1965

Plaintiffs object to the granting of defendant's motion to dismiss or transfer, filed on December 21, 1964, on the ground that this Court has jurisdiction of claims for overtime wages by government employees.

The attached Memorandum is submitted in support of this objection.

Dated: February 18, 1965

Lee Pressman, Attorney for Plaintiffs, Office and P. O. Address: 50 Broadway, New York, N. Y., 10004.

[fol. 81]

IN THE UNITED STATES COURT OF CLAIMS

CHALMERS O. DETLING, et al.

—v.—

THE UNITED STATES.

ORDER DENYING MOTION TO DISMISS AND TRANSFERRING CASE TO THE APPROPRIATE U. S. D. C.—April 12, 1965

This case comes before the court on defendant's motion to transfer or dismiss. Upon consideration thereof, together with the opposition thereto, and without oral argument, on the basis of *Wingate* v. *United States,* Ct. Cl. No. 147-61; *Alesiani, et al.* v. *United States,* Ct. Cl. No. 266-63; and *Afnese* v. *United States,* Ct. Cl. No. 294-64.

It Is Ordered that defendant's motion to dismiss be and the same is denied, and that defendant's motion to transfer be and the same is granted in that this case is transferred to the appropriate United States District Court as shall be designated by the plaintiffs to the clerk of this court.

The clerk will forward to the clerk of said court a certified copy of the record made here.

By The Court

Wilson Cowen, Chief Judge

[fol. 82]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 83]

SUPREME COURT OF THE UNITED STATES

No. 282, October Term, 1965

HARRY J. AMELL, et al., Petitioners,

—v.—

UNITED STATES.

ORDER ALLOWING CERTIORARI—October 11, 1965

The petition herein for a writ of certiorari to the United States Court of Claims is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

October Term, 1965

No. 282

HARRY J. AMELL, JAMES J. ALLWEIN, JACK E. BENNETT, CHALMERS O. DETLING, *et al.*,
Petitioners,

against

THE UNITED STATES,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

LEE PRESSMAN
DAVID SCRIBNER
Counsel for Petitioners
50 Broadway
New York, New York 10004

JOAN STERN KIOK
of Counsel.

INDEX

Table of Cases Cited

Statutes Cited

Other Authorities Cited

Supreme Court of the United States

October Term, 1965

No.

HARRY J. AMELL, JAMES J. ALLWEIN, JACK E. BENNETT, CHALMERS O. DETLING, *et al.*,

Petitioners,

against

THE UNITED STATES,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Petitioners[1] pray that a writ of certiorari issue to

[1] The names of all petitioners are as follows:

Amell v. *United States*

Harry J. Amell
Charles Banish
Edward A. Barnack
Nicholas Bdera
Frank W. Brett
Marion R. Brogdon
Loton M. Bryant
Frank H. Calhoun
Joseph R. Carman
Fred Cipresso
Jeremiah P. Collins
Joseph P. Constantineau
Robert E. Corder
Carlos De Jesus
George A. DeLong
Anthony Drages
Andrew J. Dunne
George E. DuPont
C. Forsyth
Frederick J. Fromm
Joseph Godlewski
C. Gordon Grant, Jr.
William A. Gross
Jacob M. Hand
John Hargrave
Charles Heller
Soren G. Henriksen
J. A. Kirven
Andor Kittilsen
Calvin M. Johnson
Max J. Lechich
Melvin F. Lesse
A. Liberato
James R. Loper
Donald K. McKee
John J. Markey
John H. Miller
Gaetano Minutillo
Paul J. Nelson
J. Nestor
Jason D. Oberon
Saturnin Onichimonski
Richard R. Peynelo
John A. Pregenzer
Ralph F. Randall
B. Rasmussen
Philip E. Reynolds
James C. Rowe
Daniel F. Santos
Theodore Schoenberger
M. Simonsen
Haavard Skilnand
C. W. Skotnicki
Joseph B. Smith
Harold Sorenson
John M. Stanley
Ralph W. Stockman
Alexander Talkun
Charles E. Taylor
George Toth
Theodore F. Verhey
Homer M. Waterman
Harold W. Wheeler
Jerome W. Winterfield
John Wright
Modesto Zaar
Bruno H. Zahlmann

(continued on page 2)

review four orders of the United States Court of Claims entered on April 12, 1965. All four cases involve identical questions.

Citation to Opinion Below

There are no opinions. The orders of the Court of Claims (R. Amell 43, Allwein 44, Bennett 49, Detling 51) are unreported, and are printed in Appendix B hereto, *infra*, p. 16.

Jurisdiction

The orders of the Court of Claims were entered on April 12, 1965. The jurisdiction of this Court is invoked under 28 U. S. C. § 1255(1).

Question Presented

Whether the United States Court of Claims may refuse to entertain an action for wages against the United States

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(continued from page 1)

Allwein v. *United States*

James J. Allwein
Raymond H. Belisle
Frank H. Collins
Thomas D. Outten
Joseph E. Hart
Randall D. Hartley
William G. Hill
George E. Hughes
James J. Lee
Earl Payne
Junior A. Tyler

Bennett v. *United States*

Jack E. Bennett
Stanley R. Brooks
Roy S. Coggeshall
John W. Ennis
Thomas W. Gilham
Harvey J. Marts
Earl C. McCoid
Charles R. Roof
John H. St. George
Ralph J. Vandiver
Franklin W. Warren

Detling v. *United States*

Chalmers O. Detling
Francis E. James
Severt N. Olness
Michael A. Rocco
John J. Tarpey

brought by civilian maritime employees and transfer the action to the admiralty side of the United States District Court?

Statutes Involved

The statutory provisions involved are 28 U. S. C. §§ 1346, 1491, 2401, 2501; the Suits in Admiralty Act, 41 Stat. 525 (1920), 46 U. S. C. §§ 741, 742, 745; the Public Vessels Act, 43 Stat. 1112 (1925), 46 U. S. C. § 781; the Classification Act of 1949, § 202(8), 63 Stat. 954, as amended, 5 U. S. C. § 1082(8); the Federal Employees Pay Act of 1945, §§ 102 and 212, 59 Stat. 296, 5 U. S. C. §§ 902(c) and 913; and 48 Stat. 522 (1934) as amended, 5 U. S. C. § 673c. They are printed in Appendix A, *infra*, p. 11.

Statement

Petitioners are 67 civilian employees of the Department of the Navy, Military Sea Transportation Service ("MSTS"), 22 civilian employees of the Department of the Navy, Naval Ordinance Laboratory, and 5 civilian employees of the Department of the Army, Corps of Engineers. They brought four separate actions against the United States in the Court of Claims for wages pursuant to the Federal Employees Pay Act and the Classification Act, *supra* (R. Amell 1, Allwein 1, Bennett 1, Detling 1). Jurisdiction of the Court of Claims was based on 28 U. S. C. § 1491.

The employees of MSTS and the Army Corps of Engineers are all licensed marine engineers employed on vessels operated by the respective agencies (R. Amell 2, Detling 1). The employees of the Naval Ordnance Laboratory are all boat group employees (R. Allwein 1, Bennett 1). The claims of all the petitioners are for periods going back more than two and up to six years before the date actions were commenced.

The respondent, in all four cases, moved to transfer to the United States District Court for the appropriate district or in the alternative to dismiss the actions (R. Amell 5, Allwein 6, Bennett 1, Detling 7). The sole grounds for the motions were that the Court of Claims does not have jurisdiction of these actions because "plaintiffs' claims are for seamen's wages allegedly earned in maritime employment aboard vessels owned and operated by the United States and are thus matters of admiralty and maritime jurisdiction justiciable exclusively in the district courts" under the Suits in Admiralty and Public Vessels Acts.

The Court of Claims granted respondent's motions to transfer in all four cases, Appendix B, *infra,* p. 16. The court did not file an opinion but in the order itself cited three previous cases also involving civilian maritime employees which were similarly transferred without opinion, as the basis for its transfers in the instant cases.

Reasons for Granting Writ

1. The decisions of the Court of Claims (Appendix B, *infra,* p. 16) are in direct conflict with the principles contained in *Johansen* v. *United States,* 343 U. S. 427 (1952) and *Patterson* v. *United States,* 359 U. S. 495 (1959).

In the *Johansen* and *Patterson* cases, as here, the plaintiffs were civilian seamen employed by the United States. They sued for damages for personal injuries pursuant to the Public Vessels and Suits in Admiralty Acts. This Court held that the fact that the plaintiffs were seamen did not entitle them to sue in admiralty. Rather they were confined to actions under the Federal Employees Compensation Act of 1916, 63 Stat. 865, 5 U. S. C. § 751—even though the latter act limited considerably the amounts of potential recovery. The Court rejected plaintiffs' argument that they should have the same rights as other seamen stating:

> ". . . the Federal Employees Compensation Act . . . was enacted to provide for injuries to Government employees in the performance of their duties. It covers all employees . . ."
>
> *Johansen* v. *United States*, 343 U. S. 427, 439.

The Court reasoned that the Federal Employees Compensation Act was part of a comprehensive plan for Government employees and that any exception to it would have to be clearly specified by Congress. The Court found nothing in the Public Vessels or Suits in Admiralty Acts or the legislative history of those acts to indicate that Congress intended an exception for civilian maritime employees.

The same reasoning is applicable in this case. Since 1887 government employees have had a forum in the United States Court of Claims for actions for wages. The Tucker Act, 24 Stat. 5051 (1887) (codified in various sections of 28 U. S. C.), which gave the Court of Claims concurrent jurisdiction with the District Courts over such suits, was amended in 1898 to provide for exclusive jurisdiction in the Court of Claims. A recent amendment (August 30, 1964)[2] again gave the District Court (civil side) concurrent jurisdiction with the Court of Claims in actions to recover compensation by employees of the United States where the amount claimed does not exceed $10,000. 28 U. S. C. § 1346. There is nothing in the latter section or in 28 U. S. C. § 1491 which makes an exception for government employees who are seamen. Nor is there anything in the Public Vessels and Suits in Admiralty Acts or their legislative history to indicate that Congress intended gov-

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[2] 72 Stat. 348. See Legislative History, U. S. Code Congressional Service 1964, p. 3814.

ernment employees, who already had a forum for wage claims, to be covered thereunder.[3]

2. The question presented is of importance, affecting as it does thousands of civilian seamen employed by the United States. The effect of the Court of Claims decision in the instant case is to lessen the amount of possible recovery while treating the petitioners differently from all other government employees since the statute of limitations for actions such as these is six years in the Court of Claims(or in the civil side of district court) and two years in admiralty, 46 U. S. C. § 745; 28 U. S. C. §§ 2401, 2501.

These petitioners and all other government employees who are assigned to vessels are subject to all the other federal laws which apply equally to all government employees. The Court of Claims has acquired an expertise in dealing with claims of government employees. No principles of admiralty or maritime law are involved in the instant case but rather the interpretation of federal pay statutes and agency rules and regulations.

Indeed, the Court of Claims continues to exercise jurisdiction over other types of claims involving compensation by vessel employees. See, *e.g. Middleton* v. *The United States* # 436-61, decided April 16, 1965, a suit by a chief boatswain's mate for wrongful discharge and back pay. If respondent's logic were correct, such a suit (and any other claim against the United States by civil service ves-

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[3] The Suits in Admiralty Act was passed in 1920 and the Public Vessels Act in 1925. The congressional debates on the suits in Admiralty Act show that Congress was concerned with "taking away the right of libel of certain government-owned vessels" that existed at that time. 59 Cong. Rec. 3631 (1920). The debate on the Public Vessels Act shows a concern to provide a forum for property and personal injury damages occasioned by the operation of certain United States vessels. Such claims previously were brought to a Committee on Claims of the Congress 66 Cong. Rec. 2087-2089 (1925).

sel employees) would similarly have to be brought in admiralty.

There is no reasonable basis for distinguishing between government employees who are seamen and all other government employees by requiring the vessel employees to bring suits for wages in admiralty where their recovery is seriously limited. Such a requirement is a clear case of discrimination against government employees assigned to vessels and violates basic principles of equality in the administration of laws and regulations applicable to civil service employees.

3. The decision of the Court of Claims is erroneous. Since the court rendered no opinion other than to cite three previously transferred cases also involving civilian seamen it is difficult to determine precisely why the court has transferred these cases when for many years before the court had taken jurisdiction of similar claims. *Abbott* v. *United States*, 144 Ct. Cl. 712, 169 F. Supp. 523 (1959) (suit for overtime pay by ship pilots in Panama canal); *Adams* v. *United States*, 141 Ct. Cl. 133 (1958) (wage suit by ship pilots and tugmasters employed by the Navy); *Hearne* v. *United States*, 108 Ct. Cl. 762, 68 F. Supp. 786, cert. den. 331 U. S. 858 (1947) (suit for overtime wages by master of dredge).[4] Nothing has occurred since the cases above cited

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[4] Accord: *Henderson* v. *United States*, 74 F. Supp. 343 (S. D. N. Y. 1947) (Court of Claims had exclusive jurisdiction of suits for bonuses by civilian personnel employed on vessels of the U. S. Army Transport Service).

Contra: *Thomason* v. *United States*, 184 F. 2d 105 (9 Cir. 1950) and *Jentry* v. *United States*, 73 F. Supp. 899 (S. D. Cal. 1947). Although these cases were brought in the civil side of district court and did not discuss Court of Claims jurisdiction, they support respondent's position insofar as they hold that the actions should have been brought pursuant to the Public Vessels and Suits in Admiralty Acts. Both cases were decided before the *Johansen* and *Patterson* cases, *supra*, and appear to be in direct conflict with the principles expounded in these later cases.

which would indicate any congressional dissatisfaction with Court of Claims jurisdiction of government vessel employees suits for wages. Congress had just such an opportunity to so indicate in 1960 when it amended the Suits in Admiralty Act, 74 Stat. 912, 46 U. S. C. 742. Neither the amendment nor the legislative history of the amendment shows that Congress had any intention to bring civil service vessel employees under the Suits in Admiralty or Public Vessels Acts. U. S. Code Congressional Service 1960, p. 3583.

When Congress wanted civilian vessel employees of the United States to have the same rights as privately employed seamen it specifically so provided in comprehensive legislation. War Shipping Administration Clarification Act of 1943, 57 Stat. 45, 50 U. S. C. A. Appendix, § 1291. Under this Act seamen employed by the United States through the War Shipping Administration had to enforce various claims, including claims for wages, pursuant to the Suits in Admiralty Act. See *Patterson* v. *United States, supra,* 359 U. S. at 497, fn. 2, where this Court stated that the Clarification Act, supra, "indicates that Congress has chosen with care the remedies which it has made available to civilian seamen employed by the United States".[5]

If the government is going to deny to its vessel employees the same right (a six year statute of limitations) enjoyed by all other government employees, such denial must be by Act of Congress and not by the courts.

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[5] See also *Gaynor* v. *Agwilines,* 337 U. S. 810 (1949) aff'g 169 F. 2d 612 (3rd Cir. 1948), in which the circuit court said: ". . . the purpose of the [Clarification] Act was to provide that seamen [employed through the War Shipping Administration] even though they are federal employees, should not in these respects have the normal rights, benefits and privileges of federal employees but should have instead the rights, benefits and privileges of privately employed seamen."

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

LEE PRESSMAN
DAVID SCRIBNER
Counsel for Petitioners
50 Broadway
New York, New York 10004

JOAN STERN KIOK
of Counsel.

Appendix A

28 U. S. C. § 1346

(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:

* * *

(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

* * *

(d) The district courts shall not have jurisdiction under this section of any civil action or claim for a pension.

28 U. S. C. § 1491

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

28 U. S. C. § 2401

(a) Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. . . .

28 U. S. C. § 2501

Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed, within six years after such claim first accrues. . . .

SUITS IN ADMIRALTY ACT

41 Stat. 525

March 9, 1920

46 U. S. C. §§ 741-752

Sec. 741. No vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided,* That this chapter shall not apply to the Panama Railroad Company.

Sec. 742. In cases where if such vessel were privately owned or operated, or if such cargo were privately owned or possessed, or if a private person or property were involved, a proceeding in admiralty could be maintained, any appropriate nonjury proceeding in personam may be brought against the United States or against any corporation mentioned in section 741 of this title. . . .

* * *

Sec. 745. Suits as authorized by this chapter may be brought only within two years after the cause of action arises. . . .

PUBLIC VESSELS ACT

43 Stat. 1112

March 3, 1925

46 U. S. C. §§ 781-790

Sec. 781. A libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States. . . .

CLASSIFICATION ACT OF 1949

63 Stat. 954

5 U. S. C. §§ 1071-1153

Sec. 1082. This chapter (except title XII) shall not apply to—

* * *

(8) officers and members of crews of vessels, whose compensation shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry;

* * *

FEDERAL EMPLOYEES PAY ACT OF 1945

59 Stat. 295

5 U. S. C. §§ 901-958

Sec. 902.

* * *

(c) Sections 84, 663, 667, 672a, 673 of this title, and this chapter, except sections 913 and 947 of this title, shall not apply to employees whose basic compensation is fixed and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose.

* * *

Sec. 913. Employees whose basic rate of compensation is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose shall be entitled to overtime pay in accordance with the provisions of section 673c of this title. The rate of compensation for each hour of overtime employment of any such employee shall be computed as follows * * *

ACT OF JUNE 26, 1936

48 Stat. 522 as Amended

5 U. S. C. § 673c

The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, for the several trades and occupations, which is set by wage boards or other wage-fixing authorities, shall be re-established and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932: *Provided,* That the regular hours of labor are established at not more than eight per day or forty per week, but work in excess of such hours shall be permitted when administratively determined to be in the public interest: *Provided further,* That overtime work in excess of eight hours per day or in excess of forty hours per week shall be compensated for at not less than time and one-half the basic rate of compensation, except that employees subject to this section who are regularly required to remain at or within the confines of their post of duty in excess of eight hours per day in a standby or on-call status shall be paid overtime rates only for hours of duty, exclusive of eating and sleeping time, in excess of forty per week.

* * *

Appendix B

Order

IN THE

UNITED STATES COURT OF CLAIMS

No. 387-64

HARRY J. AMELL, ET AL.

v.

THE UNITED STATES

This case comes before the court on defendant's motion to transfer or dismiss. Upon consideration thereof, together with the opposition thereto, and without oral argument, on the basis of *Wingate* v. *United States,* Ct. Cl. No. 147-61; *Alesiani, et al.,* v. *United States,* Ct. Cl. No. 266-63; and *Afnese* v. *United States,* Ct. Cl. No. 294-64,

IT IS ORDERED that defendant's motion to dismiss be and the same is denied, and that defendant's motion to transfer be and the same is granted in that this case is transferred to the United States District Court for the Southern District of New York.

The clerk will forward to the clerk of said court a certified copy of the record made here.

BY THE COURT

Apr 12 1965

WILSON COWEN
Chief Judge

Order

IN THE

UNITED STATES COURT OF CLAIMS

No. 423-64

JAMES J. ALLWEIN, ET AL.

v.

THE UNITED STATES

This case comes before the court on defendant's motion to transfer or dismiss. Upon consideration thereof, together with the opposition thereto, and without oral argument, on the basis of *Wingate* v. *United States,* Ct. Cl. No. 147-61; *Alesiani, et al.,* v. *United States,* Ct. Cl. No. 266-63; and *Afnese* v. *United States,* Ct. Cl. No. 294-64,

IT IS ORDERED that defendant's motion to dismiss be and the same is denied, and that defendant's motion to transfer be and the same is granted in that this case is transferred to the United States District Court for the Southern District of Florida.

The clerk will forward to the clerk of said court a certified copy of the record made here.

BY THE COURT

Apr 12 1965

WILSON COWEN
Chief Judge

Order

IN THE

UNITED STATES COURT OF CLAIMS

No. 269-64

JACK E. BENNETT, ET AL.

v.

THE UNITED STATES

This case comes before the court on defendant's motion to transfer or dismiss. Upon consideration thereof, together with the opposition thereto, and without oral argument, on the basis of *Wingate* v. *United States,* Ct. Cl. No. 147-61; *Alesiani, et al.,* v. *United States,* Ct. Cl. No. 266-63; and *Afnese* v. *United States,* Ct. Cl. No. 294-64,

IT IS ORDERED that defendant's motion to dismiss be and the same is denied, and that defendant's motion to transfer be and the same is granted in that this case is transferred to the United States District Court for the Southern District of Florida.

The clerk will forward to the clerk of said court a certified copy of the record made here.

BY THE COURT

Apr 12 1965

WILSON COWEN
Chief Judge

Order

IN THE

UNITED STATES COURT OF CLAIMS

No. 333-64

—o—

CHALMERS O. DETLING, ET AL.

v.

THE UNITED STATES

—o—

This case comes before the court on defendant's motion to transfer or dismiss. Upon consideration thereof, together with the opposition thereto, and without oral argument, on the basis of *Wingate* v. *United States,* Ct. Cl. No. 147-61; *Alesiani, et al.,* v. *United States,* Ct. Cl. No. 266-63; and *Afnese* v. *United States,* Ct. Cl. No. 294-64,

IT IS ORDERED that defendant's motion to dismiss be and the same is denied, and that defendant's motion to transfer be and the same is granted in that this case is transferred to the appropriate United States District Court as shall be designated by the plaintiffs to the clerk of this court.

The clerk will forward to the clerk of said court a certified copy of the record made here.

BY THE COURT

Apr 12 1965

WILSON COWEN
Chief Judge

In the Supreme Court of the United States

No. 282

HARRY J. AMELL, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners, civilian seamen employed by the United States, sued in the Court of Claims to recover overtime pay and pay increases which they claimed under the Classification Act [1] and the Federal Employees Pay Act.[2] Upon the government's suggestion that seamen's wage suits are cognizable only in admiralty, the Court of Claims ordered the suits transferred to appropriate federal district courts (Pet. App. 16-19).

[1] 63 Stat. 954, 5 U.S.C. 1071, *et seq.*

[2] 59 Stat. 295, 5 U.S.C. 901, *et seq.*

The petition seeks review of these transfer orders. The disposition of the court below, we submit, was clearly correct, and there is no conflict of decisions.

1. Seamen's wage claims are cognizable only in admiralty (*Putnam* v. *Lower*, 236 F. 2d 561 (C.A. 9); *Matson Navigation Co.* v. *United States*, 284 U.S. 352); when such claims are brought against the sovereign, they must be brought in admiralty under the Suits in Admiralty Act[3] or the Public Vessels Act.[4] *Thomason* v. *United States*, 184 F. 2d 105 (C.A. 9); *Jentry* v. *United States*, 73 F. Supp. 899 (S.D. Cal.). See also, *Fleet Corp.* v. *Rosenberg Bros.*, 276 U.S. 202; *American Stevedores* v. *Porello*, 330 U.E. 446.

2. The decision below is fully supported by this Court's holdings in *Johansen* v. *United States*, 343 U.S. 427, and *Patterson* v. *United States*, 359 U.S. 495. Both the Suits in Admiralty Act and the Public Vessels Act furnish "a complete system of administration" (*Fleet Corp.* v. *Rosenberg Bros.*, 276 U.S. at 213); and Congress' action in "providing remedies to be exclusive in admiralty would not serve substantially to establish uniformity if suits under the Tucker Act and in the Court of Claims be allowed against the United States * * *." *Johnson* v. *Fleet Corp.*, 280 U.S. 320, 327.

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[3] 41 Stat. 525, 46 U.S.C. 741, *et seq.*

[4] 43 Stat. 1112, 46 U.S.C. 781, *et seq.*

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

July 1965

☆ U. S. GOVERNMENT PRINTING OFFICE: 1965 781270 84

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 282.

HARRY J. AMELL, JAMES J. ALLWEIN, JACK E. BENNETT, CHALMERS O. DETLING, *et al.*,
Petitioners,

against

THE UNITED STATES,
Respondent.

BRIEF OF NATIONAL MARITIME UNION OF AMERICA, AFL-CIO, *AMICUS CURIAE.*

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346 Pandick Press, Inc., 22 Thames St., New York, N. Y. 10006. U. S. A.

IN THE

Supreme Court of the United States

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Petitioners,

against

THE UNITED STATES,

Respondent.

BRIEF OF NATIONAL MARITIME UNION OF AMERICA, AFL-CIO, *AMICUS CURIAE.*

Interest of *Amicus Curiae.*

The National Maritime Union of America, AFL-CIO submits this Brief as *amicus curiae* seeking reversal of the decisions below. The National Maritime Union is the collective bargaining representative for the unlicensed seamen employed aboard vessels operated by the Military Sea Transportation Service and various other governmental agencies and is directly affected by the outcome of the instant litigation as there is presently pending a similar action on behalf of the unlicensed seamen employed aboard Military Sea Transportation Service vessels. See *Afnese et al. v. United States,* Ct. Cl. 294-64. Both the Solicitor General and Counsel for Petitioners have consented in writing to the filing of this *amicus* brief.

Argument.

The emergence, since World War II, of the United States as a large scale operator of vessels—either directly through such agencies as the Military Sea Transportation Service (MSTS), or indirectly through agency agreements with privately owned companies—has resulted in frequent efforts by the government to invoke the Suits in Admiralty Act, 46 U. S. C. §§ 741-752, and Public Vessels Act, 46 U. S. C. §§ 781-790, as a means of *limiting* the rights of parties having claims against the United States. The National Maritime Union of America, AFL-CIO, as collective bargaining representative for the unlicensed seamen employed aboard MSTS and numerous other government operated vessels, strongly opposes this attempted distortion of these two important federal statutes which were intended to *expand* and not limit the right to redress against the United States.

Both the Suits in Admiralty Act and the Public Vessels Act were enacted following World War I in response to a wide spread demand that the government put aside its armor of sovereign immunity with respect to claims arising out of its mushrooming maritime operations. As this Court noted in *Johansen* vs. *United States*, 343 U. S. 427 (1952), both statutes were intended to provide remedies against the United States in those cases where none had existed before. It has never been suggested that either statute was intended to limit or replace remedies already available against the United States. Yet this is precisely the position now advanced by the government and the direct effect of the decisions presently under review.

The instant suits involve claims based upon federal wage statutes of general application to federal employees.

Such actions are properly within the jurisdiction of the Court of Claims. The government, however, seizing upon the single fact that the petitioners are seamen, argues that their remedy is no longer before the Court of Claims but rather under the Suits in Admiralty Act. By so doing, the government seeks to gain the advantage of the two year statute of limitations under the Suits in Admiralty Act, 46 U. S. C. § 745, rather than the six year statute available in cases before the Court of Claims, 28 U. S. C. § 2401(a). In this manner the Suits in Admiralty Act is being invoked to *limit* a remedy available against the United States.

We submit that this argument warps both the language and the philosophy of the Suits in Admiralty and Public Vessels acts. Nowhere in the legislative history of either of these two statutes is there the slightest suggestion that they were intended to *limit* remedies already available against the United States. In fact such an interpretation would completely defeat their legislative purpose of creating additional remedies against the United States so that the government's liability for claims arising out of its maritime operations would be on a par with that of private operators. The circumstances under which these statutes were enacted demonstrates that they were intended to supplement the various remedies already available against the government. It is clear that they were not intended to repeal existing rights. It follows that both the Suits in Admiralty Act and Public Vessels Act create alternative, and not exclusive, remedies against the government and cannot be invoked to limit rights granted under other statutes. Accordingly, the government's position that seamen are now restricted to a remedy under the Suits in Admiralty Act or Public Vessels Act should be rejected.

Conclusion.

For the foregoing reasons, it is respectfully submitted that the decisions below should be reversed.

Respectfully submitted,

ABRAHAM E. FREEDMAN,
General Counsel, National Maritime
Union of America, AFL-CIO,
36 Seventh Avenue,
New York, N. Y. 10011.

IN THE

Supreme Court of the United States

October Term, 1965

No. 282

HARRY J. AMELL, ET AL.,

Petitioners,

VS.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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DAVID SCRIBNER,
JOAN STERN KIOK,
of Counsel.

INDEX

Citations

CASES:

IN THE

Supreme Court of the United States

October Term, 1965

No. 282

HARRY J. AMELL, *et al.*,

Petitioners,

vs.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Opinions Below

There are no opinions. The orders of the Court of Claims (R. 6, 13, 24, 31) are unreported.

Jurisdiction

The orders of the Court of Claims were entered on April 12, 1965 (R. 6, 13, 24, 31). The petition for certiorari was filed June 22, 1965, and certiorari was granted October 11, 1965. The jurisdiction of this Court rests on 28 U. S. C. § 1255(1).

Statutes Involved

The statutory provisions involved are 28 U. S. C. §§ 1346(a)(2), 1491, 2401(a), 2501; the Suits in Admiralty Act, as amended, 41 Stat. 525 (1920), 46 U. S. C. §§ 741, 742, 745; the Public Vessels Act, 43 Stat. 1112 (1925), 46 U. S. C. §§ 781, 782; the Classification Act of 1949, as amended, 63 Stat. 954, § 202(7), (8), 5 U. S. C. § 1082(7),

(8); the Federal Employees Pay Act of 1945, 59 Stat. 296, §§ 102, 205, 5 U. S. C. §§ 902(c), 913; and 48 Stat. 522 (1934) as amended, 5 U. S. C. § 673c. These provisions are set forth in the appendix to this brief.

Question Presented

Whether the United States Court of Claims has jurisdiction of actions for wages brought by employees of the United States who are employed on Government vessels?

Statement of the Case

Petitioners are 67 civil service employees of the Department of the Navy, Military Sea Transportation Service, Atlantic Area ("MSTS"),[1] 22 civil service employees of the Department of the Navy, Naval Ordinance Laboratory Test Facility at Fort Lauderdale, Florida,[2] and five civil service employees of the Department of the Army, Corps of Engineers[3] (R. 2, 7, 14, 25). The claims of the MSTS employees are for certain wage increases which they allege they are entitled to by virtue of § 1082(8) of the Classification Act of 1949, 5 U. S. C. 1082(8) (R. 2-3). The other petitioners ask for overtime payments for work done in excess of 8 hours per day. Their claims are based on the Federal Employees Pay Act of 1945, the Classification Act of 1949, and 5 U. S. C. 673(c). All four cases are also based on rules and regulations of the respective executive departments involved (R. 3, 8-10, 15-17, 26-28). The claims are for varying periods up to six years before the date the actions were commenced.

---

[1] Designated as *Amell* v. *United States* in the court below.

[2] Designated as *Allwein* v. *United States* and *Bennett* v. *United States* in the court below.

[3] Designated as *Detling* v. *United States* in the court below.

Jurisdiction of the Court of Claims was based on 28 U. S. C. § 1491, which provides that the Court of Claims shall have jurisdiction of claims against the United States founded upon "any Act of Congress, or any regulation of of an executive department."

Those petitioners who are employed by MSTS and the Corps of Engineers are licensed marine engineers and the petitioners employed by the Naval Ordinance Laboratory are boat group employees. All of the petitioners are employed on vessels operated by the respective agencies of the United States (R. 2, 7, 14, 25).

In each of the cases, the respondent moved to dismiss the action or, in the alternative, to transfer to the appropriate United States District Court, on the ground that the Court of Claims does not have jurisdiction of these actions because "plaintiffs' claims are for seamen's wages allegedly earned in maritime employment aboard vessels owned and operated by the United States and are thus matters of admiralty and maritime jurisdiction justiciable exclusively in the district courts" under the Suits in Admiralty and Public Vessels Act (R. 4-5, 11-12, 23, 29-30).[4]

The Court of Claims granted respondent's motions in all four cases and ordered that the *Amell* case (MSTS employees) be transferred to the United States District Court for the Southern District of New York, the *Allwein* and *Bennett* cases (Naval Ordinance Laboratory employees) to the United States District Court for the Southern District of Florida and the *Detling* case Army Corps of Engineers employees) to the "appropriate United States District Court as shall be designated by the plaintiffs."

[4] In the *Bennett* case (involving Naval Ordinance Laboratory employees), the respondent originally answered on the merits and more than three months later moved to transfer or dismiss (R. 19-23).

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[4] In the *Bennett* case (involving Naval Ordinance Laboratory employees), the respondent originally answered on the merits and more than three months later moved to transfer or dismiss (R. 19-23).

Although the Court of Claims did not render an opinion in any of these cases, the orders referred to three prior rulings of that court involving United States employees who were also employed on vessels, as the basis for transfer (R. 6, 13, 24-25, 31).

Since no reasons for the transfer were stated in these previous cases, nor in the instant cases, it may be assumed that the Court of Claims agreed with the contention of the United States that wage claims of Government vessel employees are cognizable only in admiralty.

The transfers would have the effect of limiting the petitioners' claims to the two year period applicable under the Suits in Admiralty and Public Vessels Acts. 46 U. S. C. §§ 745, 782. The period of limitations applicable in the Court of Claims is six years. 28 U. S. C. § 2501. Almost all of the individual claims included in the cases involved in this petition cover periods of four to six years prior to the commencement of the respective actions.

Summary of Argument

Petitioners, all civilian employees of the United States employed on Government vessels, properly brought their actions for wages against the United States in the United Court of Claims. These actions are based on Acts of Congress and executive department regulations and come squarely within the provisions of the Tucker Act, which invests the Court of Claims with jurisdiction in such cases. The fact that these Government employees are seamen is not relevant to a determination as to whether the Court of Claims has jurisdiction since there is no provision in the Tucker Act which specifically or impliedly excludes claims of such employees from Court of Claims jurisdiction. In *Bruner v. United States*, 343 U. S. 112 (1952), this Court recognized the then exclusive jurisdiction of the Court of Claims "to

hear and determine claims for compensation brought by employees of the United States". Except for the Congressional granting of concurrent jurisdiction to the district courts with the Court of Claims in actions for compensation by United States employees where the amount of damages claimed does not exceed $10,000, there has been no relevant change in the Tucker Act under which these actions were brought. Until recently the Court of Claims itself has acknowledged and exercised its jurisdiction in suits involving wage claims of Government employees on United States vessels.

Neither the Suits in Admiralty Act of 1920 nor the Public Vessels Act of 1925 divest the Court of Claims of jurisdiction in actions such as those brought by petitioners. The Suits in Admiralty Act is wholly inapplicable to such actions since, under the jurisdictional test of that Act, the actions could not have been brought in admiralty against a private person. Nor are any general principles of maritime or admiralty law involved in petitioners' actions. Their claims for wages as Government employees must necessarily be decided on federal law and regulations pertaining to their compensation as Government employees rather than on admiralty or maritime law. The Public Vessels Act is inapplicable since it applies to tort damages caused by the negligent operation of a public vessel of the United States.

In *Johansen* v. *United States*, 343 U. S. 427 (1952) and *Patterson* v. *United States*, 359 U. S. 495 (1959), this Court held that Government vessel employees must be considered in the category of Government employees rather than in the category of seamen and must therefore be governed by specific legislation, in those cases the Federal Employees Compensation Act, which provides a comprehensive plan for all Government employees. The Court concluded that suits by such employees for personal injuries were not available under the Suits in Admiralty and Public Vessels

Acts and that Government vessel employees were confined to remedies provided by the specific federal laws pertaining to Government employees. The principles stated in *Johansen* and *Patterson* are applicable to petitioners who are Government employees suing the United States for wages due them under specific federal laws and regulations. Their remedies are wholly governed by federal laws affecting all Government employees. *Patterson* noted that "Congress has chosen with care the remedies which it has made available to civilian seamen employed by the United States". 359 U. S. at 497, n. 2.

Were petitioners' claims for wages relegated to admiralty jurisdiction under the Suits in Admiralty or Public Vessels Act, they would be limited to a two year statute of limitations as against a six year statute of limitations under the Tucker Act. Such diminution of their rights and remedies cannot be attributed to Congress except by the specific act of Congress. Neither the jurisdictional provisions of the Suits in Admiralty and Public Vessels Acts on their face nor the legislative history of those acts show any such intention of Congress, express or implied.

Petitioners have a clear right to sue in the Court of Claims under the Tucker Act. There is no basis for the district courts to assert jurisdiction under the Suits in Admiralty or Public Vessels Acts.

ARGUMENT

I

The Court of Claims has exclusive jurisdiction of actions by United States employees for wages where the amount of the claim exceeds $10,000. Where the amount of the claim does not exceed $10,000 the Court of Claims has concurrent jurisdiction with the district courts under the Tucker Act.

The pertinent provisions of the Tucker Act[5] are 28 U. S. C. §§ 1346 and 1491. Section 1346 provides in part:

> "(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:
>
> * * *
>
> (2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort."

Section 1491 provides:

> "The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort."

It is clear from a plain reading of the above sections that the cases involved in this petition fall squarely within those provisions of the Tucker Act. All four cases are

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[5] Act of March 3, 1887, c. 359, 24 Stat. 505, as amended; codified in 28 U. S. C. §§ 1346, 1402, 1491, 1501.

based on acts of Congress [6] and on regulations of executive departments.[7] Three of the actions commenced in the Court of Claims (*Amell, Allwein* and *Bennett*) seek damages exceeding $10,000 and, pursuant to 28 U. S. C. §§ 1346 and 1491, could only have been brought in the Court of Claims. The fourth action (*Detling*) seeks damages for less than $10,000 and could have been brought either in the Court of Claims or in the district court, at the petitioners' option.

In *Bruner* v. *United States,* 343 U. S. 112 (1952), this Court had occasion to discuss the effect of a 1951 amendment to the Tucker Act, which withdrew from the jurisdiction of the district courts' actions for compensation by *employees* of the United States. Previous to the 1951 amendment, 28 U. S. C. § 1346(d) had provided that the district courts did not have jurisdiction under the Tucker Act of a "civil action to recover fees, salary, or compensation for official services of *officers* of the United States". (Emphasis added). In deciding that the effect of the 1951 amendment was to withdraw jurisdiction of the district courts over suits by "employees" without reserving jurisdiction over pending cases, this Court stated:

> "Absent such a reservation, *only the Court of Claims has jurisdiction to hear and determine claims for compensation brought by employees of the United States* even though the district court had jurisdiction over such claims when petitioners action was brought." (Emphasis added) 343 U. S. at 115.

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[6] The Classification Act of 1949, as amended, 63 Stat. 954, § 202(7), (8), 5 U. S. C. Section 1082(7), (8); the Federal Employees Pay Act of 1945, 59 Stat. 296, §§ 102, 205, 5 U. S. C. § 902(c), 913; 48 Stat. 555 (1934), as amended 5 U. S. C. § 673c (R. 2, 8-10, 15-17, 26-28).

[7] Civilian Marine Personnel Instruction 531.1-2, Navy Civilian Personnel Instructions 610.2-1k; Army Corps of Engineers Regulations, Corps of Engineers Manual, EM 690-7-102, Change 1, Paragraph 7, Sub-paragraph (4). (R. 3, 9, 16, 27).

No action of the Court since *Bruner* appears to have qualified its statement that only the Court of Claims has jurisdiction to hear and determine claims for compensation brought by employees of the United States.[8]

Until recently, the Court of Claims took jurisdiction in actions involving wage claims of civil service employees employed on Government vessels.[9] It is only since 1961 that the Court of Claims, on the Government's motion, has transferred to the district courts cases involving wage claims by Government vessel employees. Nevertheless the Court of Claims continues to exercise jurisdiction over other types of monetary claims involving United States vessel employees. See *e. g. Middleton* v. *United States,* Court of Claims No. 436-61 (1965), in which the court took jurisdiction of a suit by a chief boatswain's mate for wrongful discharge and back pay.

Under 28 U. S. C. §§ 1346 and 1491 the Court of Claims has jurisdiction of claims for compensation founded on any Act of Congress or regulation of an executive department. No exception is made for any particular class of employees. It is not disputed that petitioners are employees of the United States. The fact that they happen to work on ves-

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[8] A 1964 amendment to 28 U. S. C. § 1346 restored concurrent jurisdiction in the district courts with the Court of Claims in actions for compensation by United States employees where the amount of damages claimed does not exceed $10,000. Pub. L. 88-519, 78 Stat. 699. See Legislative History, U. S. Congressional and Administrative News, 1964, p. 3254.

[9] See, *e.g., Abbott* v. *United States,* 144 Ct. Cl. 712, 169 F. Supp. 523 (1959), a suit for overtime pay by ship pilots employed by the Panama Canal, a United States Government agency; *Adams* v. *United States,* 141 Ct. Cl. 133 (1958), a wage suit by ship pilots and tug masters employed by the Navy; *Hearne* v. *United States,* 108 Ct. Cl. 762, 68 F. Supp. 786, cert. den. 331 U. S. 858 (1947), a suit for overtime wages by employees on floating equipment in the Panama Canal; *United States* v. *Townsley,* 323 U. S. 557 (1945), affg. 101 Ct. Cl. 237, a suit for overtime wages by a Government employed master of a dredge.

sels is immaterial. Since the claims are founded on Acts of Congress and agency regulations, nothing else is required for the invocation of the Court of Claims' jurisdiction.

II

The Suits in Admiralty and Public Vessels Acts do not divest the Court of Claims of jurisdiction under the Tucker Act in actions by United States employees for wages.

The United States would have petitioners' claims relegated to the admiralty side of the district courts and the concommitant two year statute of limitations applicable under the Suits in Admiralty Act [10] and Public Vessels Act [11] rather than to the Court of Claims under the Tucker Act with its six year statute of limitations. The gravamen of the Government's position is that since petitioners are employed on vessels of the United States their claims for wages are maritime claims which must be brought pursuant to the Suits in Admiralty and Public Vessels Acts. In other words, the Government would have petitioners' status as "seamen" override their status as "Government employees".

The jurisdictional provision of the Suits in Admiralty Act is contained in 46 U. S. C. § 742 which provides in relevant part:

> "In cases where if such vessel were privately owned or operated, or if such cargo were privately owned or based, or if a private person or property were involved, a proceeding in admiralty could be maintained, any appropriate non-jury proceeding *in personam* may be brought against the United States. . . ."

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[10] 41 Stat. 525 (1920), 46 U. S. C. §§ 741-752.

[11] 43 Stat. 1112 (1925), 46 U. S. C. §§ 781-790.

On its face this provision is inapplicable to situations in which Government employees are the plaintiffs, since there does not appear to be any situation in which a Government employee—who by definition is employed and paid by the United States Government—could have a wage claim as a Government employee against a private owner or a private vessel.

Moreover, as discussed more fully in Point I, *supra* in the cases at bar the Government employees' claims for wages are based on federal statutes and agency regulations applicable only to Government employees, and not on general principles of maritime or admiralty law. The wage actions of petitioners could not in the first instance have been brought against a private vessel owner as required by 46 U. S. C. § 742.

The legislative history of the Suits in Admiralty Act supports petitioners' position that Section 742 of that Act is inapplicable here. Prior to the enactment of the Suits in Admiralty Act in 1920, the United States, by virtue of the Shipping Act of 1916,[12] had permitted the seizure of government merchant vessels in proceedings *in rem* in admiralty. Since such proceedings proved to be unworkable, Congress soon remedied the situation by enacting the Suits in Admiralty Act, which provided for a libel *in personam* against the United States in cases where if the "vessel were privately owned or operated . . . a proceeding in admiralty could be maintained. . . ."[13]

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[12] 39 Stat. 728, 46 U. S. C. §§ 801-810.

[13] Congress was concerned with "taking away the right of libel of certain government-owned vessels". 59 Cong. Rec. 3031 (1920). For a summary of the legislative history of the Suits in Admiralty and the Public Vessels Acts, see *Johansen* v. *United States*, 343 U. S. 427 (1952); *American Stevedores Inc.* v. *Porello*, 330 U. S. 446 (1947); *U. S. Fleet Corporation* v. *Rosenberg*, 276 U. S. 202 (1928).

The 1960 Amendments to the Suits in Admiralty Act eliminated the proviso that the vessel involved must be a merchant vessel and also added the words "or if a private person or property were involved" to the text in Section 2 of the Act, 46 U. S. C. 742. The purpose of these amendments was to clarify the language of the Suits in Admiralty Act and restate "the now existing exclusive jurisdiction conferred on the district courts . . . over cases against the United States which could be sued on in admiralty if private vessels, persons or property were involved." Senate Report 1894, accompanying bill. Legislative History, U. S. Code and Congressional Service, 1960, pages 3583-3587. It is apparent from the legislative history that the insertion of the words "or if a private person or property were involved" has reference to the character or nature of the defendant or respondent and not to the plaintiff or libellant.

The jurisdictional provision of the Public Vessels Act, adopted in 1925, is contained in 46 U. S. C. § 781 and provides in pertinent part:

> "A libel in personam in admiralty may be brought against the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States. . . ."

This Court has held that the Public Vessels Act covers action for damages "caused by the negligent maintenance or operation of a public vessel of the United States." *Johansen* v. *United States*, 343 U. S. 427 (1952); *American Stevedores Inc.* v. *Porello*, 330 U. S. 446 (1947). This is in accord with the legislative history of that Act.[14]

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[14] The Congressional debate shows a concern to provide a remedy for property and personal injury damage occasioned by the operation of public vessels of the United States. Such claims had previously been brought to a Committee on Claims of the Congress. 66 Cong. Rec. 2087-2089 (1925).

Since the petitioners' claims are all for wages based on federal statutes as well as agency rules and regulations and are not for tort damages, neither the Suits in Admiralty nor the Public Vessels Act is applicable.

Thus the jurisdiction of the Court of Claims under the Tucker Act of petitioners wage claims remains unaffected by either the Suits in Admiralty or the Public Vessels Acts.

III

The *Johansen* and *Patterson* decisions of this Court require affirmation of Court of Claims jurisdiction in suits for wages by Government vessel employees since the laws under which they seek relief are a part of a comprehensive plan for all Government employees.

In *Johansen* v. *United States*, 343 U. S. 427 (1952) and *Patterson* v. *United States*, 359 U. S. 495 (1959), this Court held that civil service employees employed on United States vessels could not sue for personal injuries under the Public Vessels and Suits in Admiralty Acts, but rather were confined to their remedies under the Federal Employees Compensation Act of 1916.[15]

In *Johansen*, a suit by a Government employee for personal injuries brought under the Public Vessels Act, this Court found that the Federal Employees Compensation Act was part of a comprehensive plan for Government employees and that any exception to it would have to be clearly specified by Congress.[16] Since Government vessel

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[15] 39 Stat. 742, as amended, 5 U. S. C. §§ 751-803.

[16] It might be noted that some federal statutes relating to benefits of Government employees specifically provide that the district courts and the Court of Claims shall have original concurrent jurisdiction of any civil action or claim against the United States founded upon the particular statute involved. See e.g. Federal Employees Group Life Insurance Act of 1954, as amended, 68 Stat. 736, 5 U. S. C. §§ 2091-2103 and Federal Employees Health Benefits Act of 1959, 73 Stat. 709, 5 U. S. C. §§ 3001-3014. These acts apply to petitioners as civil service employees.

employees already had a remedy with all other Government employees in the Compensation Act which "created a comprehensive system to award payments for injuries, it should not be held to have made exceptions to that system without specific legislation to that effect". 343 U. S. at 441. The Court found nothing in the Public Vessels Act or in the Compensation Act or the legislative history to indicate that Congress intended that civil service employees who are seamen have a different remedy from other civil service employees.

In *Patterson*, an action for damages for personal injuries brought under the Suits in Admiralty Act, the Court reaffirmed the considerations which led to the conclusion in *Johansen*. The Court noted that during World War II, the passage of the Clarification Act of 1943, 57 Stat. 45, 50 U. S. C. App. § 1291, indicated that "Congress has chosen with care the remedies which it has made available to civilian seamen employed by the United States". 359 U. S. at 497, n. 2. The Clarification Act had provided that seamen employed temporarily on United States vessels as employees of the United States through the War Shipping Administration would not, because of the temporary wartime character of their employment, have the normal rights, benefits and privileges of federal employees but would instead have the rights, benefits and privileges of privately employed seamen. The Court said, in *Patterson*:

> "If civilian seamen employed by the Government are to be accorded rights different from or greater than those which they enjoy under the Compensation Act, it is for Congress to provide them." 359 U. S. at 496.

The reasoning of this Court in *Johansen* and *Patterson* is applicable to the issues here involved. The Tucker Act, which had been enacted in 1887, has provided a comprehensive system for actions by Government employees

against the United States for compensation. It covers all Government employees. The Tucker Act was in effect long before the Suits in Admiralty and Public Vessels Acts were enacted in 1920 and 1925 respectively. The Tucker Act does not make any exception for Government employees who are seamen and the Suits in Admiralty and Public Vessels Acts do not, by their jurisdictional provisions cover Government employees who are seamen.[17]

It is noteworthy that this Court reached its conclusion in *Johansen* despite the fact that it found that "literal application of the words" of the Public Vessels Act would permit suits against the United States for personal injuries by public vessels employees pursuant to that Act. The Court is under no such handicap in the instant case, since as noted above, by their very terms neither the Suits in Admiralty Act nor the Public Vessels Act applies to wage claims by Government employees who are seamen.[18]

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[17] The Court of Claims had assumed jurisdiction of claims for compensation by vessel employees for many years after the passage of the Suits in Admiralty and Public Vessels Acts. *Supra*, n. 9. If the Congress thought that such actions should be brought pursuant to the Suits in Admiralty and Public Vessels Acts, it had the opportunity to make such provision when it amended the Tucker Act in 1951, 65 Stat. 727, and 1964, 78 Stat. 699, and when it amended the Suits in Admiralty Act in 1960, 74 Stat. 912. Its failure to do so indicates a satisfaction with the comprehensive system that has long prevailed.

[18] *Thomason* v. *United States*, 184 F. 2d 105 (9 Cir. 1950) and *Jentry* v. *United States*, 73 F. Supp. 899 (S. D. Cal. 1947) would appear to support respondent's position. They conflict with the later principles of this Court in *Johansen* and *Patterson*, and are clearly wrong. Cf. *Henderson* v. *United States*, 74 F. Supp. 343 (S. D. N. Y. 1947) in which the district court held that the Court of Claims had exclusive jurisdiction under the Tucker Act of suits for bonuses by civilian personnel employed on vessels of the United States Army Transport Service.

Since no principles of admiralty or maritime law are involved in the instant cases, if any uniformity is required here it is that pertaining to the interpretation of federal statutes which apply to Government employees. The questions involved in these cases are based on interpretations of federal statutes and agency rules and regulations applicable to United States employees.

As Government employees the petitioners are subject to the many special statutes which apply to all Government employees. [19] On the other hand petitioners are not entitled to the many special benefits available to privately employed seamen under the maritime law such as maintenance and cure.[20]

Since Sections 2401 and 2501 of 28 U. S. C. provide for a six year statute of limitations for civil actions brought against the United States and for claims of which the Court of Claims has jurisdiction, the effect of requiring vessel employees of the United States to sue under the Suits in Admiralty and Public Vessels Acts would be to either bar

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[19] E.g. Annual and Sick Leave Act of 1951, as amended, 65 Stat. 679, 5 U. S. C. §§ 2061-2071; Federal Employees Group Life Insurance Act of 1954, as amended, 68 Stat. 736, 5 U. S. C. §§ 2091-2103; Civil Service Retirement Act, as amended, 70 Stat. 743, 5 U. S. C. §§ 2251-2268; Federal Employees Health Benefits Act of 1959, 73 Stat. 709, 5 U. S. C. §§ 3001-3014, Federal Employees Compensation Act of 1916, as amended, 39 Stat. 742, 5 U. S. C. §§ 751-803 and other provisions generally contained in 5 U. S. C.

[20] In addition, as United States Government employees they do not have the right to strike and although they may join unions and choose representatives under Exec. Order 10988, 27 Fed. Reg. 551 (1962), they cannot engage in meaningful collective bargaining because their wages and benefits are governed by statute. Moreover, if petitioners were privately employed seamen their wage claims would be the subject of grievance procedure and arbitration. As Government employees their claims must be presented to the General Accounting Office prior to the courts. 31 U. S. C. § 71.

certain claims completely when not brought within the two year limitation applicable to those Acts, or to cause drastic reductions in the amount potentially recoverable.[21]

If Government employees who are seamen must be limited to their remedies for personal injuries under the Federal Employees Compensation Act as are all other Government employees, with the resulting monetary loss, then surely they have the right to be treated as other Government employees for purposes of wage claims with the monetary benefits of a longer statute of limitations. They cannot be treated as Government employees or as seamen depending upon whether the Government seamen stand to lose (and the Government to gain) by such treatment. This could constitute unconscionable discrimination.

In absence of specific legislation by the Congress to the contrary, the petitioners are entitled to sue in the Court of Claims under the Tucker Act as are all other Government employees.

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[21] Cf. *Continental Casualty Co.* v. *United States,* 156 F. Supp. 942 (Ct. Cl. 1957) and *United Fruit Co.* v. *United States,* 168 F. Supp. 549 (Ct. Cl. 1958). In the *Continental* case, the Court of Claims said:

> "We are convinced that it cannot be assumed that Congress, in the passage of the Public Vessels Act, intended to withdraw from a claimant a remedy he clearly had in the Court of Claims to sue for a breach of a construction contract, even though it related to a vessel that had been laid up for four years, and that it did not intend to reduce the time in which he had to assert that claim from six years to two years. Such a purpose is not discernible from the language of the Act, and to stretch its language to make it fit the defendant's Procrustean bed would deprive this contractor of a remedy enjoyed by all other contractors engaged in the performance of a contract to do any other sort of public work."

Conclusion

Petitioners have a clear right to sue in the Court of Claims under 28 U. S. C. § 1491. There is no basis for the district courts to assert jurisdiction under the Suits in Admiralty or Public Vessels Acts.

The Orders of the Court of Claims transferring these actions to the district courts should be reversed.

December, 1965.

Respectfully submitted,

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APPENDIX

28 U. S. C. § 1346

(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:

* * *

(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

* * *

28 U. S. C. § 1491

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

* * *

28 U. S. C. § 2401

(a) Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. . . .

* * *

28 U. S. C. § 2501

Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed, within six years after such claim first accrues. . . .

SUITS IN ADMIRALTY ACT

41 Stat. 525

March 9, 1920

46 U. S. C. §§ 741-752

Sec. 741. No vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided,* That this chapter shall not apply to the Panama Railroad Company.

Sec. 742. In cases where if such vessel were privately owned or operated, or if such cargo were privately owned or possessed, or if a private person or property were involved, a proceeding in admiralty could be maintained, any appropriate nonjury proceeding in personam may be brought against the United States or against any corporation mentioned in section 741 of this title. . . .

* * *

Sec. 745. Suits as authorized by this chapter may be brought only within two years after the cause of action arises. . . .

PUBLIC VESSELS ACT

43 Stat. 1112

March 3, 1925

46 U. S. C. §§ 781-790

Sec. 781. A libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States. . . .

Sec. 782. . . . Such suits shall be subject to and proceed in accordance with the provisions of chapter 20 of this title or any amendment thereof, insofar as the same are not inconsistent herewith, except that no interest shall be allowed on any claim up to the time of the rendition of judgment unless upon a contract expressly stipulating for the payment of interest.

* * *

CLASSIFICATION ACT OF 1949

63 Stat. 954

5 U. S. C. §§ 1071-1153

Sec. 1082. This chapter (except title XII) shall not apply to—

* * *

(7) employees in recognized trades or crafts, or other skilled mechanical crafts, or in unskilled, semiskilled, or skilled manual-labor occupations, and other employees including foremen and supervisors in positions having trade, craft, or laboring experience and knowledge as the paramount requirement. . . . *Provided,* That the compensation of such employees shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates;

(8) officers and members of crews of vessels, whose compensation shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry; . . .

FEDERAL EMPLOYEES PAY ACT OF 1945

59 Stat. 295

5 U. S. C. §§ 901-958

Sec. 902.

• • •

(c) Sections 84, 663, 667, 672a, 673 of this title, and this chapter, except sections 913 and 947 of this title, shall not apply to employees whose basic compensation is fixed and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose.

• • •

Sec. 913. Employees whose basic rate of compensation is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose shall be entitled to overtime pay in accordance with the provisions of section 673c of this title. The rate of compensation for each hour of overtime employment of any such employee shall be computed as follows . . .

ACT OF JUNE 26, 1936

48 Stat. 522 as Amended

5 U. S. C. § 673c

The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, for the several trades and occupations, which is set by wage boards or other wage-fixing authorities, shall be re-established and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932: *Provided*, That the regular hours of labor are established at not more than eight per day or forty per week, but work in excess of such hours shall be permitted when administratively determined to be in the public interest: *Provided further*, That overtime work in excess of eight hours per day or in excess of forty hours per week shall be compensated for at not less than time and one-half the basic rate of compensation, except that employees subject to this section who are regularly required to remain at or within the confines of their post of duty in excess of eight hours per day in a standby or on-call status shall be paid overtimes rates only for hours of duty, exclusive of eating and sleeping time, in excess of forty per week.

IN THE

Supreme Court of the United States

October Term 1965

No. 282

HARRY J. AMELL, JAMES J. ALLWEIN, JACK E. BENNETT, CHALMERS O. DETLING, *et al.*,
Petitioners,

against

THE UNITED STATES

BRIEF OF MARITIME TRADES DEPARTMENT OF THE AFL-CIO, *AMICUS CURIAE*

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BRIEF OF MARITIME TRADES DEPARTMENT OF THE AFL-CIO, *AMICUS CURIAE*

Interest of *Amicus Curiae*

The Maritime Trades Department of the AFL-CIO submits this Brief as *amicus curiae* urging reversal of the Court of Claims' decision below.

The Maritime Trades Department of the AFL-CIO is a constituent body of that federation, comprising thirty-two seagoing and shoreside labor organizations representing approximately five million workers in the maritime industry and related trades. Four of its member unions—the Military Sea Transportation Union, the Marine Engineers Beneficial Association, the Staff Officers Association, and the International Organization of Masters, Mates & Pilots—represent a large number of the almost seven thousand employees of the federal government engaged directly in merchant shipping operations. The outcome of this case will

have an immediate and substantial impact on the future welfare of each of these employees, their families and the collective bargaining activities of their organizations. Based on this interest the Maritime Trades Department (AFL-CIO) requested permission to appear at this stage of the litigation as a friend of the Court. Both the Solicitor General's office and Petitioner's Counsel have consented to the filing of this *amicus* brief.

Argument

The question of law presented by the instant litigation is clear: Does the Court of Claims have jurisdiction over wage actions brought by United States Government employees who work aboard federally-owned and operated vessels? That legal question, however, conceals a much more fundamental issue: May federal employees pursuing wage claims be deprived of the liberal benefits of the six-year statute of limitations declared in the Tucker Act—and applicable to all other federal employees—because of the fortuity that they happen to be *seagoing* federal employees?

It is beyond cavil that for all other purposes the petitioning seamen, and others similarly situated, are treated as and have all the attributes of employees of the United States Government: They are forbidden, under pain of discharge, fine, and imprisonment, from exercising or asserting the right to strike enjoyed by all employees in the private sector.[1] As Government employees, their right to join unions and select representatives exists only by express leave of the President.[2] Their rates of pay are strictly controlled by federal statutes,[3] and there is no opportunity for traditional collective bargaining over wage

[1] 69 Stat. 624, 625, 5 U. S. C. §§ 118p-118r.

[2] Exec. Order 10988, 27 Fed. Reg. 551 (1962).

[3] 63 Stat. 954, 5 U. S. C. § 1082(2) and other provisions generally contained in 5 U. S. C.

rates. Although wages are geared to the prevailing rates of pay in private shipping operations, government employees may realize only prospectively and to a limited degree the gains won in the industry at large. In other words, if private contract negotiations continue beyond the termination date of superceded agreement—as is often the case in the maritime industry—the final contract always provides for the retroactive effect of wage increases. Although this requires a significant, back-dated addition to "prevailing" rates of pay, Government-employed seamen receive the benefits of such increases only from the actual day on which agreement is reached in the private sector.

Nor do Government seamen enjoy the fringe benefits negotiated for their privately-employed counterparts. As employees of the United States, they have been strictly limited, with respect to sick leave, vacation, death, health, medical and pension benefits, to the programs provided by statute for all federal Government employees.[4] It is common knowledge that the fringe benefit plans set up by the federal Government, although deemed adequate by some, do not approach the standards achieved through collective bargaining in the private maritime industry.

Those in Petitioner's situation are also strictly treated as federal employees with respect to claims for personal injuries. In the landmark case of *Johansen* v. *United States*, 343 U. S. 427 (1952) this Court held, at page 428, with respect to civil service employees employed on United States *public* vessels "that the benefits available to such seamen under the Federal Employees' Compensation Act of 1916, 39 Stat. 742, 5 U. S. C. § 751 *et seq.*, 5 U. S. C. A.

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[4] Annual and Sick Leave Act of 1951, as amended, 65 Stat. 679, 5 U. S. C. §§ 2061-2071; Federal Employees Group Life Ins. Act of 1954, as amended, 68 Stat. 736, 5 U. S. C. §§ 2091-2103; Civil Service Retirement Act, as amended, 70 Stat. 743, 5 U. S. C. §§ 2251-2268; Federal Employees Health Benefits Act of 1959, 73 Stat. 709, 5 U. S. C. §§ 3001-3014.

§ 751, *et seq.*, are of such a nature as to preclude a suit for damages under the Public Vessels Act." In *Patterson* v. *United States*, 359 U. S. 495 (1959), petitioners had been employed aboard *merchant* ships operated by the United States and were pursuing their remedy under the Suits in Admiralty Act. This Court again held such seamen to be federal employees and therefore limited to the remedies provided in the Federal Employees' Compensation Act. The rule of *Johansen* v. *United States*, *supra*, was expressly reaffirmed at 359 U. S. 496:

> "The considerations which led to that conclusion [in Johansen] are equally applicable to cases where the government vessel is engaged in merchant service. The United States 'has established by the Compensation Act a method of redress for employees. There is no reason to have two systems of redress.' 343 U. S. at page 439, 72 S. Ct. at page 856."

This Court, in *Patterson*, went on to observe, at pages 496 and 497:

> "If civilian seamen employed by the government are to be accorded rights different from or greater than those which they enjoy under the Compensation Act, it is for Congress to provide them."

The instant litigation presents an analogous claim—this time propounded by a defendant—that the Suits in Admiralty Act created a new and exclusive remedy for seamen in an area for which Congress had long before made ample and explicit provision with the Tucker Act of 1887, 24 Stat. 505, as amended, 28 U. S. C. §§ 1346, 1491.

A further argument in favor of Petioners lies in the limited nature of Federal District Court jurisdiction.

It must be emphasized at the outset that the district courts of the United States are courts of limited jurisdiction; they may rule only on those cases or controversies that

the federal Constitution or Acts of Congress have placed within the scope of their power. When Congress has reserved particular disputes from this strictly defined area of jurisdiction, the affected courts of the United States are powerless to act.[5]

With respect to the present controversy, just such a situation exists. In 24 Stat. 505 (1887), now 28 U. S. C. § 1346, Congress has explicitly set forth one facet of District court jurisdiction:

> "(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:
>
> * * *
>
> "(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated damages in cases not sounding in tort."
>
> * * *

The district courts, therefore, are powerless to consider such cases as these involving more than $10,000.

Where the district courts' jurisdiction terminates however, Congress has seen fit to extend the jurisdiction of the Court of Claims into an area of *exclusive* competence. At 28 U. S. C. § 1491:

> "The Court of Claims shall have jurisdiction to render judgment upon *any claim* against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." [Emphasis supplied]

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[5] 1 MOORE'S FEDERAL PRACTICE, ¶ 0.60[3].

It is clear, therefore, from the very face of the statutes, that the Court of Claims enjoys exclusive jurisdiction of all claims against the United States exceeding $10,000 in amount, "founded . . . upon any express or implied contract with the United States."

In *Bruner* v. *United States*, 343 U. S. 112 (1952), the Supreme Court expressly placed wage claims by employees of the federal government within the sweeping ambit of this rule. A 1951 amendment to the Tucker Act had withdrawn from the jurisdiction which the federal district courts exercise concurrently with the Court of Claims:

> "[A]ny civil action or claim to recover fees, salary, or compensation for official services of officers or employees of the United States."[8]

The effective date of this amendment fell between the granting of petitioner's request for certiorari and the date the case was argued. This Court noted that Congress, in passing the amendment, had failed *expressly* to reserve the district court's jurisdiction of such pending matters and held that:

> "[a]bsent such a reservation, only the Court of Claims has jurisdiction to hear and determine claims for compensation brought by employees of the United States even though the District Court had jurisdiction over such claims when petitioner's action was brought. Merchant's Insurance v. Ritchie, 1867, 5 Wall. 541, 18 L. Ed. 540." 343 U. S. 112 at 115.

In the face of this solid barrier of hornbook law the United States now argues that the effect of the Suits in Admiralty and the Public Vessels Acts, *supra*, was to remove wage claims of federal Government employees who happen to be seamen from the exclusive jurisdiction of the

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[8] 28 U. S. C. § 1346(d)(2), 65 Stat. 727.

Court of Claims and to place such actions exclusively within that of the district courts. This it cannot do.

The Court, in *Johansen* v. *U. S.*, 343 U. S. 427, at 431, 432, with specific reference to the Public Vessels Act, wrote:

> "[The] general language . . . must be read in the light of the central purpose of the Act as derived from the legislative history of the Act and the surrounding circumstances of its enactment. * * * [T]his Act was one of a number of statutes which attest 'to the growing feeling of Congress that the United States should put aside its sovereign armor in cases where federal employees have tortiously caused personal injury or property damage.' [American Stevedores, Inc. v. Porello, 330 U. S. 446, at page 453.] *These enactments were not usually directed toward cases where the United States had already put aside its sovereign armor*, granting relief in other forms. With such a legislative history one hesitates to reach a conclusion as to the meaning of the Act by adoption of a possible interpretation through a literal application of the words. * * * [T]he most that can be said * * * is that Congress did not specifically exclude such claimants from the coverage of the Public Vessels Act." [Emphasis supplied]

It will be remembered that this Court expressly reaffirmed the holding of *Johansen* in the case of *Patterson* v. *United States*, 359 U. S. 495 (1959), where the identical issue was at stake, but the Government vessel was engaged in merchant service and therefore subject to the Suits in Admiralty Act.[7]

The same policies inherent in the Public Vessels Act provide the foundation of the Suits in Admiralty Act as well. "The Suits in Admiralty Act and the Public Vessels Act are not to be regarded as discreet enactments treating related situations in isolation," wrote the late Mr. Justice

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[7] See page 4, *supra*.

Frankfurter for a unanimous Court in *Calmar S.S. Corp. v. United States,* 345 U. S. 446, at page 455. They constitute "manifestations of a single larger purpose, jointly forming a rational system free of random omissions and exceptions." *Id.* at page 451. This Court held in *Patterson* and *Johansen* that neither Act supplanted the exclusive remedy which Congress provided seamen employed by the United States through the Federal Employees' Compensation Act. It should not now hold that either Act deprives such persons of the exclusive remedy for wage claims provided by Congress in the Tucker Act.

The federal Government's intention in the instant litigation cannot be disguised. It wants its seagoing employees to be classified as "federal employees" for purposes of compensation, liability for personal injuries, and labor-management relations; in short, in all cases in which the Government benefits and the employees do not. But when the issue is payment of back-due wages, Respondent executes a *volte-face* and argues that they are not really "federal employees" but "seamen." Expediency, the benefits of a short statute of limitations, not logic or reason, supports such an ambivalent approach.

It must not be ignored that these federal employees are indeed seamen, and that, with the escalation of the present conflict in Vietnam, their number has steadily increased. They are subpect to the same occupational hardships and hazards as are their counterparts in the private maritime industry. They spend months at a time in foreign waters, far from the advice of competent legal counsel and far from the court houses where they must go to initiate suits to recover back wages due from their employer. In ports the world over, literally hundreds of American seamen lie injured in hospitals, again far removed from any opportunity to commence suit for the vindication of their rights against employers. The delay from the time their claims

accrue to the time they may be in a position to implement them is obviously likely to increase under these conditions.

And yet Respondent urges in the instant litigaton that such men be denied the benefit of the liberal six-year statute of limitations applicable to wage claims of all other federal employees, and be bound instead by a two-year statute. Such a contention ill behooves the Government for which these brave men daily risk their lives.

CONCLUSION

For these reasons, the Maritime Trades Department of the AFL-CIO respectfully urges that this Court reverse the decisions of the Court of Claims and remand the cases for consideration on the merits.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 282

HARRY J. AMELL, ET AL., PETITIONERS

v.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The orders of the Court of Claims transferring these cases to federal district courts (R. 6, 13, 24–25, 31) are unreported.

JURISDICTION

The orders of the Court of Claims were entered on April 12, 1965 (R. 6, 13, 24, 31). The petition for a writ of certiorari was filed on June 22, 1965, and granted on October 11, 1965. 382 U.S. 810 (R. 32). This Court's jurisdiction is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether a seaman employed by the United States who has a claim for wages may sue the United States

only in a federal district court under the Suits in Admiralty Act, and not in the Court of Claims under the Tucker Act.

STATUTES INVOLVED

The Suits in Admiralty Act, 41 Stat. 525, as amended, 46 U.S.C. 741 *et seq.*, provides in pertinent part:

> *Section 1*
>
> No vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions * * *.
>
> *Section 2*
>
> In cases where if such vessel were privately owned or operated, or if such cargo were privately owned or possessed, or if a private person or property were involved, a proceeding in admiralty could be maintained, any appropriate nonjury proceeding in personam may be brought against the United States or against any corporation mentioned in section 741 of this title. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the

vessel or cargo charged with liability is found. * * *

* * * * *

Section 5

Suits as authorized by this chapter may be brought only within two years after the cause of action arises: *Provided,* That where a remedy is provided by this chapter it shall hereafter be exclusive of any other action by reason of the same subject matter against the agent or employee of the United States or of any incorporated or unincorporated agency thereof whose act or omission gave rise to the claim * * *.

The Tucker Act, 24 Stat. 505, as amended, 28 U.S.C. 1491, provides in pertinent part:

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

The Classification Act of 1949, 63 Stat. 954, as amended, 5 U.S.C. 1071 *et seq.,* provides:

Section 202(8), 5 U.S.C. 1082(8)

This chapter * * * shall not apply to—

* * * * *

(8) officers and members of crews of vessels, whose compensation shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry * * *.

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The Federal Employees Pay Act of 1945, 59 Stat. 295, 5 U.S.C. 901, *et seq.*, provides:

Section 205, 5 U.S.C. 913

> Employees whose basic rate of compensation is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose shall be entitled to overtime pay in accordance with the provisions of section 673c of this title. * * *

The Act of March 28, 1934, Section 23, 48 Stat. 522, as amended, 5 U.S.C. 673c, provides:

> * * * That overtime work in excess of eight hours per day or in excess of forty hours per week shall be compensated for at not less than time and one-half the basic rate of compensation * * *.

STATEMENT

The case is a consolidation of four separate actions for wages, filed in the Court of Claims under the Tucker Act by seamen employed on government vessels.

No. 387–64 (*Amell* v. *United States*) below was brought by 67 seamen employed as licensed marine engineer officers on vessels operated by the Military Sea Transportation Service (MSTS), Atlantic Area, Department of the Navy (R. 2). They alleged that an agreement negotiated between their collective bargaining representative, the National Marine Engineer's Beneficial Association (NMEBA), and the Commander, MSTS, Atlantic Area, provided that "prevailing pay rates and practices in the maritime industry

are ascertained by analysis of * * * agreements and contracts between commercial carriers and maritime labor unions" (R. 3); that under the collective bargaining agreements in effect between private shipowners and NMEBA, private marine engineers received 3½ percent pay increases effective June 15, 1962, and June 15, 1963 (R. 2); and that MSTS had refused to pay its licensed marine engineers, including petitioners, these increases (R. 3). Petitioners alleged that such refusal constituted a violation of the agreement between NMEBA and the Commander, MSTS, Atlantic Area (R. 3), and of Section 202(8) of the Classification Act of 1949, which provides that seamen employed by the government shall be paid not according to ordinary civil service scales but "in accordance with prevailing rates and practices in the maritime industry" (R. 10).

No. 423–64 (*Allwein* v. *United States*) below was an action by 11 "boat group employees" of the Naval Ordinance Laboratory Test Facility of the Department of the Navy for overtime pay (R. 7–8). Petitioners alleged that they were required to work 8½ hours per day but were paid for only 8 hours of work per day, and that they were entitled to compensation for the ½ hour per day overtime (R. 8). Petitioners invoked as the basis of their claim Section 202 (8) of the Classification Act (R. 10) and Section 205 of the Federal Employees Pay Act of 1945, relating to payment for overtime work (R. 8–9). No. 269–64 (*Bennett* v. *United States*) was an identical action by 11 other boat group employees of the Naval Ordinance Laboratory (R. 14–17).

The fourth suit filed below, No. 333–64 (*Detling* v. *United States*), was brought by five seamen employed on a dredge operated by the Corps of Engineers of the Department of the Army (R. 25). They claimed that they are sometimes required to work certain "port watch tours of duty"; that during such port watch tours they must work 24 hours per day, but are paid for only 8 hours; and that they are entitled under the Classification and Federal Employees Pay Acts to be paid for the other 16 hours at overtime rates (R. 26–27).

In all four cases, petitioners predicated jurisdiction on the Tucker Act (R. 2, 7, 15, 25), and in all the United States filed motions to transfer the actions to various federal district courts on the ground "that it appears from the face of the petition[s] that plaintiffs' claims are for seamen's wages allegedly earned in maritime employment aboard vessels owned and operated by the United States and are thus a matter of admiralty and maritime jurisdiction justiciable exclusively in the district courts [under the Suits in Admiralty Act] * * *" (R. 4–5, 11–12, 23, 29–30). The Court of Claims, in brief orders (R. 6, 13, 24–25, 31), granted the motions.

SUMMARY OF ARGUMENT

In the Tucker Act, Congress empowered the Court of Claims to hear certain claims against the United States, including claims in admiralty. Later, Congress passed the Suits in Admiralty Act, which established a comprehensive machinery for suing the United States upon maritime claims. The sole issue

in this case is whether the later Act provides the exclusive remedy for seamen employed on vessels of the United States who have wage claims founded on federal employment statutes or contracts. We believe that it does.

I

The overriding purpose of the Suits in Admiralty Act was to create a single, comprehensive and uniform remedy, administered under the admiralty jurisdiction of the federal district courts, for the prosecution of maritime claims against the United States. Accordingly, this Court has held in an unbroken line of decisions that the Act provides the exclusive method of suing the United States upon a cause of action maritime in character, and that the Tucker Act, insofar as it may formerly have provided a basis for suits against the United States founded on maritime claims, has been repealed *pro tanto*.

Congress, moreover, on the several occasions when it has amended the Suits in Admiralty Act and related statutes, has placed its imprimatur upon the Court's holding. The principle that the Act's remedy is exclusive is now so deeply woven into the fabric of the Act that congressional action would be required to overrule it.

II

Since the remedy provided by the Act is exclusive, the Court of Claims acted correctly in transferring petitioners' suits to the appropriate district courts. This of course assumes—as we think clear—that petitioners have a remedy under the Suits in Admiralty Act. The Act, without qualification or exception,

gives the district courts jurisdiction of all claims against the United States of a maritime character. Seamen's wage claims, like other claims arising from maritime contracts, have traditionally been regarded as maritime, and the courts, accordingly, have uniformly assumed that wage claims of government-employed seamen are litigable under the Suits in Admiralty Act. This has also been the understanding of Congress.

III

Such a result is fully consistent with the purposes of the Act and with sound public policy. In enacting the Suits in Admiralty Act, Congress determined that admiralty issues involved in litigation against the United States should be heard in the federal district courts, presumably because of their expertise in admiralty matters. The issues typically raised in wage claims of government-employed seamen—and, in fact, the very issues raised by these petitioners in their complaints—are traditional admiralty issues. As we demonstrate, they turn on principles of admiralty law, not principles governing the compensation of federal employees generally; they ought, therefore, be tried in the federal district courts.

Moreover, the Suits in Admiralty Act provides a completely adequate framework for the prosecution of wage claims. Confining wage claimants to a remedy under the Act should not impair their ability to prosecute claims successfully. On the contrary, the admiralty remedy provided by the Act confers important advantages on wage claimants that they would not enjoy in Court of Claims actions.

IV

Finally, the result we urge is entirely consistent with this Court's decisions in *Johansen* v. *United States*, 343 U.S. 427, and *Patterson* v. *United States*, 359 U.S. 495, on which petitioners principally rely. In those cases it was held that the admiralty statutes [1] do not afford a remedy for personal injuries in cases within the scope of the Federal Employees Compensation Act, which gives government seamen (in common with other federal employees) a workmen's compensation form of remedy. The Court found that Congress in the Compensation Act had established a

[1] As originally enacted, the Suits in Admiralty Act was limited to government merchant vessels and tugboats, and excluded public vessels. The latter were separately covered in the Public Vessels Act, 43 Stat. 1112, 46 U.S.C. 781, *et seq.*, enacted five years later. The two statutes have generally been treated as being *in pari materia*. See, *e.g.*, *Patterson* v. *United States*, *supra*, at 496. Because of uncertainty engendered by the public-merchant vessel distinction (see H. Rep. No. 523, 86th Cong., 1st Sess., pp. 2–3; S. Rep. No. 1894, 86th Cong., 2d Sess., pp. 3–6), Congress in 1960 amended Section 2 of the Suits in Admiralty Act to delete the reference to merchant vessels. Act of Sept. 13, 1960, Pub. L. 86–770, 74 Stat. 912; see p. 19, *infra*. Thus, the Suits in Admiralty Act now extends to government public as well as merchant vessels. The vessels involved in No. 387–64 (*Amell*) below, alleged to be "operated and controlled by the Military Sea Transportation Service" (R. 2), might be either. Presumably the vessels involved in the other cases—boats used by the Naval Ordinance Laboratory and a dredge operated by the Corps of Engineers (R. 7, 14, 25)—are public vessels, although their character is not dealt with in the pleadings. As we have indicated, however, the distinction is no longer relevant to whether there is jurisdiction under the Suits in Admiralty Act.

comprehensive and particularized scheme of compensation to govern certain claims of federal employees, including seamen; had intended that this scheme provide the exclusive remedy for all claims within its scope; and had not intended to displace it in enacting the admiralty acts.

The Tucker Act, in contrast, cannot be regarded as a focused and deliberate effort to create a scheme of relief with respect to seamen's wage claims; it was intended merely as a general waiver of sovereign immunity for contract claims against the government. Hence, *Johansen* and *Patterson* are inapposite.

ARGUMENT

I. THE SUITS IN ADMIRALTY ACT PROVIDES THE EXCLUSIVE METHOD OF SUING THE UNITED STATES UPON A MARITIME CAUSE OF ACTION. THERE IS NO TUCKER ACT JURISDICTION OF SUCH A SUIT

In this part of our argument, we show that the Suits in Admiralty Act furnishes the exclusive remedy against the government in all cases where an action could be brought under the Act—*i.e.*, in all cases of a maritime character—and thus supersedes the Tucker Act insofar as that Act might otherwise empower the Court of Claims to hear suits based on maritime claims against the government. We note at the outset that we do not understand petitioners to deny the exclusive character of the remedy under the Suits in Admiralty Act.[2] Petitioners' basic contention,

[2] The *amicus curiae* brief of the National Maritime Union, however, contends that seamen employed by the government have concurrent remedies for wage claims under both the Tucker and Suits in Admiralty Acts.

rather, is that wage claims are not maritime claims within the intention of that Act, and hence are exclusively cognizable in proceedings under the Tucker Act. That question we take up in Point II.

A. As originally enacted in 1887, the Tucker Act gave the Court of Claims jurisdiction of claims "in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, *or admiralty* if the United States were suable * * *."[3] But in 1920 Congress passed the Suits in Admiralty Act (41 Stat. 525) and in Section 2 of that Act (now 46 U.S.C. 742) provided that in cases involving government merchant vessels or their cargoes, where "a proceeding in admiralty could be maintained" if the vessels or cargoes were privately owned, an admiralty suit could be brought against the United States. Section 2 provided further that suits under the Act "shall be brought" in federal district courts; Section 3 provided that the procedure in such actions should be applicable to "like cases between private

[3] Act of Mar. 3, 1887, c. 358, § 1, 24 Stat. 505 (emphasis added); see, also, Act of Mar. 3, 1911, c. 231, § 145, 36 Stat. 1136. For the present language of the Tucker Act (now 28 U.S.C. 1491), see p. 3, *supra*. The Court of Claims' jurisdiction under the Tucker Act is concurrent with the district courts in matters of less than $10,000, exclusive above that. 28 U.S.C. 1346(a).

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parties"; Section 5 imposed a two-year limitations period for suits under the Act; and Section 13 provided that "the provisions of all other Acts inconsistent herewith are hereby repealed." The remaining sections dealt with other procedural aspects of the newly created remedy.

The immediate occasion for such legislation was the unhappy experience under Section 9 of the Shipping Act, 1916, 39 Stat. 730, which had permitted judicial seizure of government vessels in admiralty suits against the government;[4] the Suits in Admiralty Act accordingly substituted an *in personam* remedy for the *in rem* remedy of the Shipping Act. However, there was more to the new Act, as this Court explained when faced with the issue whether a libel in admiralty against the United States could be maintained otherwise than under the Act's provisions. The Act, the Court observed, "had a wider effect and created a broader personal obligation of the United States, * * * like that of a private owner, which might be enforced in admiralty * * *." *Fleet Corp.* v. *Rosenberg Bros.*, 276 U.S. 202, 212.[5] It "provides a remedy in admiralty for adjudicating and satisfying all claims arising out of the possession or operation of merchant vessels of the United States" (276 U.S. at 213) and "furnishes a complete system of administration * * * by which uniformity is established as to venue, service of process, rules of decision

[4] *Johnson* v. *Fleet Corp.*, 280 U.S. 320, 325. See *The Lake Monroe*, 250 U.S. 246.

[5] See, also, *Eastern Transp. Co.* v. *United States*, 272 U.S. 675, 689-692; *Johnson* v. *Fleet Corp.*, *supra*, at 326.

and procedure, rate of interest, and periods of limitation" (*ibid.*).

The Court concluded that the Act "was intended to furnish the exclusive remedy in admiralty against the United States * * * on all maritime causes arising out of the possesssion or operation of merchant vessels" (*id.* at 214), although it reserved the question whether there might be concurrent legal remedies in the Court of Claims or district courts by virtue of the Tucker Act. Two years later, it held there were not. *Johnson* v. *Fleet Corp.*, 280 U.S. 320. The plaintiff in *Johnson* had brought a Tucker Act suit in federal district court against the United States for breach of a contract to carry sugar from Cuba to New York on a government merchant vessel. The Court held that the action could not be maintained.[6] Since the cause of action "arose out of the possession or operation of a merchant vessel by or for the United States" (p. 326), it was covered by the Suits in Admiralty Act. The Court concluded that the remedy under that Act was exclusive of all other remedies and that the Tucker Act had been repealed *pro tanto*.

The exclusivity principle of *Johnson* was reaffirmed in *Matson Navigation Co.* v. *United States*, 284 U.S.

[6] Three other cases were decided in the *Johnson* opinion. They involved actions against the government's operating agent, the Fleet Corporation. The Court held that these suits, too, were barred. This holding was later modified in *Brady* v. *Roosevelt S.S. Corp.*, 317 U.S. 575, but the Court there was at pains to reaffirm *Johnson* so far as suits against the United States were concerned. See p. 14, n. 7, *infra*.

352, and in several later decisions.[7] In *Matson,* the Court held that the Court of Claims' jurisdiction of a suit based upon alleged breach of a contract for the operation of government vessels had been "withdrawn from it by the Suits in Admiralty Act" (284 U.S. at 359); "jurisdiction of maritime causes of action against the United States, arising out of the operation of merchant vessels for it, is vested exclusively in the district courts." *Id.* at 356.

At the heart of these decisions is a recognition that the congressional purpose to afford a single, complete and uniform admiralty remedy in the Suits in Admiralty Act would be thwarted if claims cognizable under the Act could also be brought in different forums and under different rules. For example, since the Suits in Admiralty Act and the Tucker Act have different limitations periods (46 U.S.C. 745; 28 U.S.C. 2501), the result of concurrent jurisdiction would be that the government could not know in advance of suit whether the limitations period applicable to a particular claim was two or six years. It was precisely this kind of uncertainty that the uniform and exclusive procedure established by the Suits in Admiralty Act—with its express repeal of all prior inconsistent statutory provisions—was designed to dispel.

Moreover, Congress ordained that the remedial system it was establishing to govern maritime litigation against the government should be one fashioned and

[7] *Brady* v. *Roosevelt S.S. Corp.*, 317 U.S. 575, 577, 579; *Hust* v. *Moore-McCormack Lines*, 328 U.S. 707, 716–718, 720; *id.*, at 741 (dissenting opinion). See, also, *Cosmopolitan Co.* v. *McAllister*, 337 U.S. 783, which overruled *Hust* on an unrelated ground.

applied according to the principles of admiralty jurisdiction; the remedies created were remedies in admiralty. This purpose could be realized only if the remedy under the Suits in Admiralty Act was deemed to exclude any Court of Claims remedy. For "the District Courts are, in our judicial system, the accustomed forum in matters of admiralty; everything else being equal, no efforts should be made to divert this type of litigation to judges less experienced in admiralty." *Calmar S.S. Corp* v. *United States,* 345 U.S. 446, 455. As this Court pointed out in *Calmar,* the Court of Claims is not experienced in admiralty matters. If it had jurisdiction to hear maritime claims against the United States, therefore, a basic objective of the Suits in Admiralty Act would be defeated: to establish a uniform procedure *in admiralty* for the vindication of such claims. That is why Congress expressly provided in Section 2 of the Act that suits under it may be brought only in federal district courts.

B. The exclusivity principle enunciated in *Johnson* and the cases following it has been considered at length by Congress on a number of occasions when the Suits in Admiralty Act or related statutes were being amended. Each time, Congress declined to disturb the principle, choosing instead to build from it.

1. When *Johnson* was decided, concern was expressed about claimants who, in reliance upon pre-*Johnson* lower court holdings that the remedy provided by the Suits in Admiralty Act was not exclusive, had filed actions against the United States under the Tucker Act or actions at law against the Fleet

Corporation (see p. 13, n. 6, *supra*) in State or federal courts, and who now found themselves time-barred from bringing new actions under the Suits in Admiralty Act. See S. Rep. No. 771, 72d Cong., 1st Sess.; H. Rep. No. 1012, 72d Cong., 1st Sess. Although the *Johnson* decision was criticized in Congress as an "unexpected interpretation of the admiralty act" (H. Rep. No. 1012, *supra,* at p. 1), Congress declined to overrule it. Instead, Congress lifted the two-year limitations period in the Act for time-barred claimants who had filed timely actions in the Court of Claims or elsewhere prior to the *Johnson* decision. Act of June 30, 1932, c. 315, 47 Stat. 420, amending Section 5 of the Suits in Admiralty Act. These claimants could thus bring suit under the Suits in Admiralty Act notwithstanding the limitations period provided in the Act. But they could not bring Tucker Act or other proceedings outside the Suits in Admiralty Act. See S. Rep. No. 771, *supra,* at p. 2. Congress had accepted the basic holding of *Johnson.*

2. In revising Title 28 of the United States Code in 1948, Congress deleted the provision of the Tucker Act giving the Court of Claims jurisdiction over non-tort claims "in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable * * *." Act of June 25, 1948, c. 646, 62 Stat. 940. One of the reasons for deleting the "admiralty" portion of this provision, according to the Reviser's Notes, was that "the Court of Claims has no admiralty jurisdiction, but the Suits

in Admiralty Act * * * vests exclusive jurisdiction over suits in admiralty against the United States in the district courts." H. Rep. No. 308, 80th Cong., 1st Sess., Appendix, p. 138.

3. In 1950, Congress again amended Section 5 of the Suits in Admiralty Act. Act of Dec. 13, 1950, c. 1136, 64 Stat. 1112 (now the second proviso in 46 U.S.C. 745). This time, Congress lifted the limitations period to afford relief to seamen who, in reliance upon this Court's decision in *Hust* v. *Moore-McCormack Lines,* 328 U.S. 707, overruled in *Cosmopolitan Co.* v. *McAllister,* 337 U.S. 783, had filed suits against operating agents—instead of against the United States under the Suits in Admiralty Act—and who were time-barred from filing new actions under the latter Act.[8] Again, Congress chose to modify the limitations period under the Suits in Admiralty Act rather than disturb the principle that the remedy under that Act was exclusive.

Congress, in the 1950 Act, added another proviso to Section 5: "That where a remedy is provided by * * * [the Suits in Admiralty Act] it shall hereafter be exclusive of any other action by reason of the same subject matter against the agent or employee of the United States or of any incorporated or unincorporated agency thereof whose act or omission gave rise to the claim." Congress desired to make clear that the Act excluded actions under other

[8] See H. Rept. No. 2060, 80th Cong., 2d Sess., pp. 2–3; H. Rep. No. 1292, 81st Cong., 1st Sess., pp. 1–3; S. Rep. No. 1782, 81st Cong., 2d Sess., p. 2; S. Rep. No. 2535, 81st Cong., 2d Sess., p. 2.

statutes against the government's operating agent. The underlying assumption was that the Act's remedy was exclusive so far as the government itself was concerned.

> [T]he bill expressly restates the existing law that the remedy by suit against the United States is exclusive of every other type of action by reason of the same subject matter *against the United States* or against its employees or agents.[9]

4. In 1960, Congress empowered the Court of Claims to transfer to district courts cases over which the latter had exclusive jurisdiction, and provided that when this happened the original filing in the Court of Claims would toll the applicable statute of limitations. Act of Sept. 13, 1960, Pub. L. 86-770, 74 Stat. 912, 28 U.S.C. [redacted]. The assumption was that the district courts had an exclusive jurisdiction under the Suits in Admiralty Act. It frequently happened that lawyers filed in the Court of Claims suits cognizable under the Suits in Admiralty Act. These cases had to be dismissed because "exclusive jurisdiction is in the district courts in admiralty" (H. Rep. No. 523, 86th Cong., 1st Sess., p. 2; S. Rep. No. 1894, 86th Cong., 2d Sess., p. 3). When this happened a claimant might—and often did—find himself completely out of court, barred from filing a fresh action in a district court because of the expiration of the two-year limitations period. See H. Rep. No. 523,

[9] S. Rep. No. 2535, 81st Cong., 2d Sess., p. 1 (emphasis added). See, also, to the same effect, S. Rep. No. 1782, 81st Cong., 2d Sess., pp. 1-2.

supra, at pp. 2–3; S. Rep. No. 1894, *supra,* at p. 3. The Act removed this danger.

The same problem led Congress, in the 1960 Act, to abolish the distinction between public and merchant government vessels (see p. 9, n. 1, *supra*), which had caused uncertainty and led to frequent misfilings. S. Rep. No. 1894, *supra,* at pp. 2, 6. But, in amending the Suits in Admiralty Act to achieve this result, Congress carefully retained the requirement in Section 2 that suits under the Act "shall be brought in the district court * * *." It intended thereby to affirm the exclusivity of the district court's jurisdiction of causes encompassed by the Act. The amended Section 2

> restates in brief and simple language the now existing exclusive jurisdiction conferred on the district courts, both on the admiralty and law sides, over cases against the United States which could be sued on in admiralty if private vessels, persons, or property were involved. [S. Rep. No. 1894, *supra,* at p. 2.]

Repeatedly, then, Congress has accepted, as the basis of significant new legislation, the principle enunciated in the decisions of this Court that the jurisdiction conferred by the Suits in Admiralty Act is exclusive. It has legislated "with specific reference" to those decisions. Since they "are part of the arch on which the new structure rests," this Court should "refrain from disturbing them lest * * * [it] change the design that Congress fashioned."[10]

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[10] *State Bd. of Ins.* v. *Todd Shipyards,* 370 U.S. 451, 458. See, also, *United States* v. *Philadelphia National Bank,* 374

II. SEAMEN'S WAGE CLAIMS—TRADITIONALLY WITHIN THE ADMIRALTY JURISDICTION—ARE LITIGABLE UNDER THE SUITS IN ADMIRALTY ACT, AND THEREFORE CANNOT BE THE SUBJECT OF A SUIT IN THE COURT OF CLAIMS UNDER THE TUCKER ACT

If it is accepted that the remedy provided by the Suits in Admiralty Act for claims cognizable under it is exclusive and allows of no concurrent remedy under the Tucker Act, the only remaining question is whether the claims of the present petitioners are within the scope of the former Act. If they are, the Court of Claims acted correctly in transferring the cases to district courts. Since petitioners apparently do not disagree that the remedy under the Suits in Admiralty Act is exclusive, the question whether the Suits in Admiralty Act gives a remedy for seamen's wage claims is the heart of this case. We show in this part of our argument that it does. In the next part, we show that this answer, clearly compelled by law, is sound policy as well.

A. The Suits in Admiralty Act extends to all cases where, but for the doctrine of sovereign immunity, "a proceeding in admiralty could be maintained." The test is whether "the cause of action is maritime" (*Matson Navigation Co.* v. *United States,* 284 U.S. 352, 356, 357), which depends on whether the matters in issue are "characteristically within the admiralty jurisdiction." *Id.* at 358. Thus, whether in the present case there is jurisdiction under the Suits in Ad-

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U.S. 321, 340, n. 17, 349; *Davis* v. *Department of Labor,* 317 U.S. 249; *Toolson* v. *New York Yankees, Inc.,* 346 U.S. 356; cf. *United States* v. *Dixon,* 347 U.S. 381; *Overstreet* v. *North Shore Corp.,* 318 U.S. 125, 131–132.

miralty Act turns on whether seamen employed by the government could maintain a proceeding in admiralty for wages allegedly due them if the government were a private employer.[11]

This is the only test. For surely the Act was not intended to include some maritime causes and exclude others.[12] There is no basis in the language, structure, or legislative history of the Act for such a distinction—one which would be opposed to the basic thrust of the Act toward a uniform and inclusive admiralty remedy for maritime claims against the government. Petitioners' assertion (Br. 13) that the Act is limited to tort suits is particularly without basis, in view of this Court's express holdings that contract actions arising from the operation of government merchant vessels may be brought under the Act. *E.g., Shewan & Sons* v. *United States,* 266 U.S. 108; *Johnson* v. *Fleet Corp., supra; Matson Navigation Co.* v. *United States, supra; Calmar S.S. Corp.* v. *United States,* 345 U.S. 446, 455.

B. Clearly, a seaman's wage claim against his employer is within the traditional bounds of the ad-

[11] Petitioners' contention (Br. 11) that the Act is inapplicable because "there does not appear to be any situation in which a Government employee * * * could have a wage claim as a Government employee against a private owner or a private vessel" distorts the language of Section 2. The statute permits suit on a claim arising from the operation of a government vessel as "if such vessel were privately owned or operated"; if a vessel were privately owned, its employees would, of course, be private, not governmental, employees.

[12] Save in the very special situation presented by the Federal Employees Compensation Act, discussed in Point IV, *infra,* pp. 31–34.

miralty jurisdiction and could, in the case of a privately employed seaman, be the basis of a libel in admiralty. As Mr. Justice Story stated for the Court in *Sheppard* v. *Taylor,* 5 Pet. 675, 711 (a case where seamen brought a libel *in personam* for wages due them):

> It has been argued, that the admiralty has no jurisdiction in this case; but we are of the opinion, that the objection is unfounded. Over the subject of seamen's wages, the admiralty has an undisputed jurisdiction, *in rem,* as well as *in personam* * * *.

The Court has many times reaffirmed this principle, most recently in *Kossick* v. *United Fruit Co.,* 365 U.S. 731, 735: "Without a doubt a contract for hire either of a ship or of the sailors and officers to man her is within the admiralty jurisdiction." [13]

Since the test of jurisdiction under the Suits in Admiralty Act is whether a claim is maritime in character, and seamen's wage claims plainly are, the courts—including this Court—have repeatedly and without question or exception assumed jurisdiction

[13] To the same effect, see, *e.g., Oliver* v. *Alexander,* 6 Pet. 143, 146; *The Thomas Jefferson,* 10 Wheat. 428, 429 (pointing out that contracts for wages are within the admiralty jurisdiction where "the service was to be substantially performed on the sea, or on tide-water"); *Patterson* v. *Bark Eudora,* 190 U.S. 169; *United Fish Co.* v. *Erickson,* 248 U.S. 308, 312; *Strathearn S.S. Co.* v. *Dillon,* 252 U.S. 348; *The Steel Trader,* 275 U.S. 388; *Isbrandtsen Co.* v. *Johnson,* 343 U.S. 779; *The Sonderborg,* 47 F.2d 723 (C.A. 4), certiorari denied, 284 U.S. 618; *Putnam* v. *Lower,* 236 F.2d 561 (C.A. 9); *Monteiro* v. *Sociedad Maritima San Nicolas, S.A.,* 280 F.2d 565 (C.A. 2), certiorari denied, 364 U.S. 915.

under the Act of actions for wages brought by seamen employed on government ships.[14] Moreover, prior

[14] See *McCrea* v. *United States*, 294 U.S. 23; *Farrell* v. *United States*, 336 U.S. 511, 519–521; *The Meton*, 287 Fed. 531 (C.A. 4); *United States* v. *Smith*, 12 F.2d 265 (C.A. 5), certiorari denied, 271 U.S. 686; *Stetson* v. *United States*, 155 F.2d 359 (C.A. 9); *Shilman* v. *United States*, 164 F.2d 649 (C.A. 2), certiorari denied, 333 U.S. 837; *Shields* v. *United States*, 175 F.2d 743, 745 (C.A. 3), certiorari denied, 338 U.S. 899; *Page* v. *United States*, 177 F.2d 601 (C.A. 9); *Keen* v. *United States*, 199 F.2d 151 (C.A. 2); *Brown* v. *United States*, 283 Fed. 425 (N.D. Cal.); *Halvorsen* v. *United States*, 284 Fed. 285 (W.D. Wash.); *Buchanan* v. *United States*, 24 F.2d 528 (N.D. Cal.); *Grant* v. *United States War Shipping Administration*, 65 F. Supp. 507 (E.D. Pa.); *Butler* v. *United States War Shipping Administration*, 68 F. Supp. 441 (E.D. Pa.); *Bagley* v. *United States*, 77 F. Supp. 260 (N.D. Cal.); *Young* v. *United States*, 78 F. Supp. 954 (S.D. Tex.); *Aird* v. *United States*, 116 F. Supp. 281 (E.D. Pa.).

Petitioners assert (Br. 9) that, until recently, the Court of Claims assumed jurisdiction in actions involving wage claims of seamen employed on government vessels. They cite *United States* v. *Townsley*, 323 U.S. 557, affirming 101 Ct. Cl. 237; *Hearne* v. *United States*, 107 Ct. Cl. 335, 68 F. Supp. 786, certiorari denied, 331 U.S. 858; *Adams* v. *United States*, 141 Ct. Cl. 133; *Abbott* v. *United States*, 144 Ct. Cl. 712, 169 F. Supp. 523. However, it appears from the opinions in these cases that the jurisdictional question was not raised or noticed. Moreover, all of the cases arose prior to 1960; all apparently involved public vessels; and the Court of Claims had taken the position that the Public Vessels Act did not encompass all maritime contract actions. *Continental Casualty Company* v. *United States*, 156 F. Supp. 942 (Ct. Cl.). Since 1960, when the coverage of the Suits in Admiralty Act was broadened to include actions involving both public as well as merchant vessels, the Court of Claims has uniformly declined to entertain suits involving wage claims of government-employed seamen. Petitioners cite *Henderson* v. *United States*, 74 F. Supp. 343 (S.D.N.Y.), for the proposition that the Court of Claims has exclusive jurisdiction under the Tucker Act of suits for bonuses

to 1960, when the Suits in Admiralty Act was limited to actions involving merchant vessels, and admiralty actions involving public vessels were covered by the Public Vessels Act (see p. 9, n. 1, *supra*), the only two courts which considered the matter held that the Public Vessels Act likewise embraced actions against the government for seamen's wages. *Thomason* v. *United States*, 184 F. 2d 105 (C.A. 9); *Jentry* v. *United States*, 73 F. Supp. 899 (S.D. Cal.); but cf. *Eastern S.S. Lines* v. *United States*, 187 F. 2d 956, 959 (C.A. 1).[15]

C. Congress, too, has understood that wage claims by seamen who are employed by the government are embraced by the Suits in Admiralty Act. Thus, in Section 1 of the Clarification Act of 1943, 57 Stat. 45, 50 U.S.C. App. 1291(a) (enacted in order to define the rights of government seamen employed through the War Shipping Administration), Congress provided that claims of such seamen—expressly including claims involving the "collection of wages"—should "be enforced pursuant to the provisions of the Suits in Admiralty Act * * *." The legislative history indicates that this provision was based on the view that under existing law the government's merchant seamen were entitled to enforce their claims against

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by personnel employed on government vessels (Br. 15). However, in that case, also, the issue of jurisdiction was not raised.

[15] It has also been consistently held that wage suits by seamen employed by the government are subject to the two-year period of limitations applicable to cases under the admiralty acts (46 U.S.C. 745, 782). *Thomason* v. *United States*, *supra*; *Myers* v. *United States*, 81 F. Supp. 747 (E.D.N.Y.); *McKenna* v. *United States*, 91 F. Supp. 556 (S.D.N.Y.).

the government, including wage claims, in actions under the Suits in Admiralty Act.[16] As shown above (pp. 22–24), there was ample basis in the case law for assuming, as Congress did, that the right of a government merchant seaman to bring a wage claim against the government under the Suits in Admiralty Act was well settled. Congress, it is clear, believed that the only exception it was making in the Clarification Act's general pattern of treating the seamen subject to that Act as private rather than government personnel was in providing that their "rights shall be enforced in accordance with the provision of the Suits in Admiralty Act" (S. Rep. No. 1813, 77th Cong., 2d Sess., p. 6)—the assumption being that suits for the collection of wages were embraced by the Suits in Admiralty Act.

Since seamen's wage claims are litigable under that Act, it follows, for the reasons stated in Point I of our argument, that they cannot also be litigated un-

[16] Thus, the Senate Committee on Commerce, in pointing to some of the problems (such as the distinction between public and merchant vessels) in existing law which needed clarification, stated (S. Rep. No. 62, 78th Cong., 1st Sess., p. 5):

> These same rights [the rights and benefits of seamen in case of death, injury, illness, detention, and so on that would be available to them if employed by private employers] may be asserted against the United States as the employer under the Suits in Admiralty Act providing the vessel involved is a merchant vessel.

And the House Committee observed (H. Rep. No. 2572, 77th Cong., 2d Sess., p. 9): "Seamen employed as Government employees on vessels owned by or bareboat-chartered to the War Shipping Administration are sometimes precluded from enforcing against the United States the[ir] rights and benefits * * * except under the Suits in Admiralty Act."

der the Tucker Act, and that the Court of Claims, therefore, acted correctly in transferring petitioners' suits to the appropriate district courts. As next we show, there are no reasons of policy opposed to this result.

III. THE VIEW THAT THE DISTRICT COURTS HAVE EXCLUSIVE JURISDICTION OF WAGE CLAIMS UNDER THE SUITS IN ADMIRALTY ACT IS REQUIRED BY THE POLICIES OF THAT ACT AND IS FULLY COMPATIBLE WITH THE EFFECTIVE PROSECUTION OF SUCH CLAIMS AGAINST THE UNITED STATES

A. As noted earlier (pp. 14–15, *supra*), a fundamental policy of the Suits in Admiralty Act is to confine maritime causes against the United States to courts experienced in admiralty matters—the federal district courts. This policy would be undermined if wage claims were deemed excepted from the coverage of the Act, for such claims typically involve issues of a specialized admiralty character. Indeed, ordinarily a government seaman's wage claim presents precisely the same kinds of questions as those with which the district courts deal constantly in admiralty proceedings based on wage claims of privately employed seamen—which all concede are within the admiralty jurisdiction.

This is because in wage matters federal law does not treat government-employed seamen like other federal employees, but like other seamen. For one thing, the federal statutes applicable to the wages of privately employed seamen have been held to apply to govern-

ment-employed seamen as well.[17] For another, the statutes governing the wages of federal employees are largely inapplicable to government seamen. The very provision of federal law upon which the present suits are principally based—Section 202(8) of the Classification Act of 1949—exempts government employees who are members of the crews of vessels from the provisions of the Classification Act applicable to other government employees, and provides that their compensation shall be "in accordance with prevailing rates and practices in the maritime industry." Thus, Section 202(8) in effect incorporates by reference, and applies to government seamen, the rules, practices, and contracts governing the wages of private seamen. This means that a government seaman's wage suit must perforce be decided according to the law—admiralty law—of shipboard employment. Petitioners' complaints, with their allegations regarding

[17] See, *e.g.*, *The Meton*, 287 Fed. 531 (C.A. 4); *Brown* v. *United States*, 283 Fed. 425 (N.D. Cal.); and *Bagley* v. *United States*, 77 F. Supp. 260 (N.D. Cal.), all involving the one-month's-wages provision of 46 U.S.C. 594; *Butler* v. *United States War Shipping Administration*, 68 F. Supp. 441 (E.D. Pa.), involving the payment provision of 46 U.S.C. 596; *United States* v. *Smith*, 12 F. 2d 265 (C.A. 5), certiorari denied, 271 U.S. 686 (earned-but-unpaid-wages provision of 46 U.S.C. 597); *Larson* v. *United States*, 255 F. 2d 166 (C.A. 4) (fund for the relief of sick and disabled seamen under 46 U.S.C. 628, 706); *Shilman* v. *United States*, 164 F. 2d 649 (C.A. 2), certiorari denied, 333 U.S. 837, applying the provisions of 46 U.S.C. 596, 597, 600, 601, 682, 683, and 685 against the government. One possible exception to the applicability of these statutes to the government involves the double wage penalty provision of 46 U.S.C. 596. See *McCrea* v. *United States*, 294 U.S. 23, 25–26, reserving this question.

the pay of privately employed seamen and the collective bargaining agreements between maritime unions and private shipowners (R. 2–3, 10, 17–18, 28), clearly so indicate.

This is also true of petitioners' claims founded on the Federal Employees Pay Act. The Act requires overtime pay for an employee who works more than eight hours a day. Section 205, 5 U.S.C. 913; see 5 U.S.C. 673c.[18] But to determine the applicability of the statutory requirement to the present facts it will be necessary to determine what "port watch tours of duty" (see Statement, *supra*, p. 6) are and the significance of the Navy's practice with respect to work shifts on naval vessels (R. 9–10, 16–17). These are maritime issues—as are all of the basic issues in the four cases consolidated here—which, in our system, are the province of the federal district courts, our admiralty courts. They are not issues with which the Court of Claims has familiarity and experience or which arise in suits on wage claims of federal employees other than seamen.

B. The Suits in Admiralty Act provides a completely adequate remedial system for the vindication of seamen's wage claims. In some respects, it is a superior system, from the seaman's point of view, to that of the Tucker Act. For example, under the Tucker Act the only venue possible in many cases is the District of

[18] This is the only provision of the Act applicable to government seamen; they are exempt from all the other provisions. See Section 102(c) of the Act, 5 U.S.C. 902(c).

Columbia;[19] under the Suits in Admiralty Act, the plaintiff has a wide choice of venue. The plaintiff who prevails in a suit under the Suits in Admiralty Act receives more interest than he would in a Tucker Act suit. In district court Tucker Act cases, interest runs only from the date of judgment. 28 U.S.C. 2411(b). In Court of Claims cases, the interest provisions are even more limited. 28 U.S.C. 2516. But under the Suits in Admiralty Act interest may, in the discretion of the court, run from the date the libel is filed. 46 U.S.C. 743, 745. And the plaintiff can receive greater costs in a Suits in Admiralty Act case. Costs in Tucker Act suits are confined to witness and filing fees (28 U.S.C. 2412(b)), but a court may award costs generally in an action under the Suits in Admiralty Act. 46 U.S.C. 743.

In one respect only[20] is the Tucker Act a more desirable basis of suit from the wage claimant's point of view: it has a longer statute of limitations (six years) than the Suits in Admiralty Act (two). However, it is doubtful whether the shorter period actually impairs the ability of seamen to vindicate wage (or other) claims. Certainly, the experience of these petitioners lends no firm support to the view that it does. It is not clear that any of the claims involved in this case are time-barred under the Suits in Admiralty Act; it appears that most are not.[21]

[19] The Court of Claims' jurisdiction under the Tucker Act is exclusive not only in cases involving more than $10,000, but also in all cases, regardless of amount, involving pension claims. 28 U.S.C. 1346 (a)(2) and (d).

[20] Of course, under neither Act is there a right to jury trial.

[21] Of the 94 petitioners, 67 brought suit on November 12, 1964, for wage increases allegedly due beginning June 15, 1962, and

And petitioners do not contend that the two-year limitations period will, in general, prevent seamen employed by the government from vindicating wage claims.

The Maritime Trades Department of the AFL-CIO suggests in its brief *amicus curiae* (pp. 8–9) that seamen need the longer period of limitations because they spend so much time in foreign ports, where they have no opportunity to file lawsuits. But this overlooks the fact that the courts might well hold, if the issue arose, that the statute of limitations under the Suits in Admiralty Act was tolled during the period when a seaman claiming under the Act was abroad. The fact that the issue, to our knowledge, has not arisen once in the 46 years that the Act has been on the statute books—a period during which it was universally accepted that the Suits in Admiralty Act was the proper remedy for wage claims

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June 15, 1963 (R. 2–3). At most, claims for wages due between June 15, 1962, and November 12, 1962, will be time-barred; the greater part of their claims will clearly be timely. Nor is it clear that the claims for wage increases between June 15 and November 12, 1962, are in fact barred. In this case, there were administrative remedies which had to be (and petitioners alleged (R. 4) were) exhausted (see MSTS Civilian Marine Personnel Instructions, § 770.4–1.b). In *McMahon* v. *United States*, 342 U.S. 25, 28, the Court expressly left open the question whether the period of limitations prescribed in the Suits in Admiralty Act is tolled during the pendency of administrative proceedings. Some or all of the claims for the first five months after June 15, 1962, might thus be held timely, since it does not appear from the record how long the administrative proceedings took. As to the remaining 27 petitioners, the record does not disclose the period for which wages are claimed (see R. 7–11, 14–18, 25–29).

against the government (see pp. 22–25, *supra*)—is persuasive evidence that the two-year period has not, in practice, created an obstacle to meritorious claims.

Accordingly, there is no need to imply—in the teeth of the language and purpose of the Act—an exception for wage claims. They are traditionally maritime. They involve the same issues as other admiralty cases. And the Act provides a fully adequate procedure for their enforcement in admiralty.

IV. THIS COURT'S *JOHANSEN* AND *PATTERSON* DECISIONS LEND NO SUPPORT TO THE VIEW THAT A TUCKER ACT REMEDY FOR SEAMEN'S WAGE CLAIMS SURVIVED THE ENACTMENT OF THE SUITS IN ADMIRALTY ACT

We address ourselves finally to petitioners' contention that—notwithstanding all of the foregoing considerations—a contrary result is indicated by this Court's decisions in *Johansen* v. *United States,* 343 U.S. 427, and *Patterson* v. *United States,* 359 U.S. 495, albeit neither involved the question whether a Tucker Act remedy survived the passage of the Suits in Admiralty Act.

In those cases, the Court held that the admiralty statutes did not repeal the Federal Employees Compensation Act insofar as that Act gave seamen employed by the government, in common with other government employees, a workmen's compensation type of remedy; rather, it was the remedy under the Compensation Act that was exclusive. The Court's conclusion was based upon the nature of the remedy established by that Act, which, as the

Court emphasized in *Johansen*,[22] "undertook to provide a comprehensive compensation system for federal employees who sustain injuries in the performance of their duty." 343 U.S. at 432. "Such a comprehensive plan for waiver of sovereign immunity, in the absence of specific exceptions, would naturally be regarded as exclusive." *Id.* at 440. And the Court noted that it had already "accepted the principle of the exclusive character of federal plans for compensation." *Ibid.* Accordingly, the Court ruled that in enacting the admiralty acts Congress had not intended to displace the compensation scheme it had recently adopted as appropriate for dealing with personal injuries of federal employees—a "'system * * * of simple, certain, and uniform compensation'" (*ibid.*).

This reasoning does not control the question whether Tucker Act jurisdiction of seamen's wage claims was unaffected by the passage of the admiralty acts.[23] The Tucker Act was not a systematic effort to govern a particular area of employee rights; it was a general permission for suits against the government. It was not a compensation scheme, which the

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[22] *Johansen*, which held that, in light of the Compensation Act, a personal-injury action could not be maintained under the Public Vessels Act, is the principal decision. *Patterson* extended the ruling to the Suits in Admiralty Act, but in a very brief *per curiam* opinion which does not elaborate upon the reasoning in *Johansen*.

[23] Neither the majority nor dissenting opinion in *Johansen* (or the opinion in *Patterson*) alludes to the question, or suggests any qualification of the *Johnson*, *Matson*, *Brady* and other decisions holding that the Suits in Admiralty Act repealed the Tucker Act *pro tanto*.

Court has held ordinarily takes precedence over a tort remedy for the same claims (*Feres* v. *United States,* 340 U.S. 135), but a general grant of judicial power. Unlike the Compensation Act, the Tucker Act created no new substantive regulatory principles.

If Congress, in the Tucker Act, had taken in hand the problem of government seamen's wage claims, it might be a proper inference that the admiralty acts were intended, as it were, to legislate around the earlier enactment. But Congress did nothing of the kind in the Tucker Act. It was in the Suits in Admiralty Act—not the Tucker Act—that Congress undertook to establish a comprehensive remedial system for maritime contract claims, including wage claims. Congress thought such claims should be litigated in district court admiralty proceedings under the uniform procedures prescribed in the Act.

There is no anomaly in treating seamen employed by the government like other federal employees for Compensation Act purposes, and like other seamen for purposes of suing on wage claims. Seamen are a hybrid category of federal employees. While they are, of course, employees of the government, federal law treats them in some respects as if they were privately employed. One such respect is wages. The applicable statutes, as pointed out earlier (pp. 26–28, *supra*), provide in general that seamen employed by the government shall be treated as if they were privately employed It is therefore entirely appropriate that for purposes of suing to collect wages from

the government they, like their fellow seamen who are privately employed, should be directed to a remedy in admiralty.

CONCLUSION

The orders of the Court of Claims should be affirmed.

Respectfully submitted.

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SUPREME COURT OF THE UNITED STATES

No. 282.—October Term, 1965.

Harry J. Amell et al., Petitioners, v. United States.	On Writ of Certiorari to the United States Court of Claims.

[May 16, 1966.]

Mr. Chief Justice Warren delivered the opinion of the Court.

The case before us presents interesting problems of a jurisdictional nature. The Suits in Admiralty Act [1] vests exclusive jurisdiction in the district courts when the suit is of a maritime nature. Under the Tucker Act,[2] the Court of Claims has jurisdiction over contractual claims against the United States. This jurisdictional interaction presents itself here.

The petitioners are employees of various federal executive departments working aboard government vessels. They filed contractual actions in the Court of Claims, alleging they were entitled to back pay increases and overtime pay for their labors, invoking various federal pay statutes and regulations. In all these suits, the petitioners predicated jurisdiction on the Tucker Act, which has a generous six-year limitations period and provides a grace period as well, 28 U. S. C. § 2501 (1964 ed.). Their employer, the United States, filed motions to have the actions transferred to various federal district courts on the ground that the claims were of a maritime nature and justiciable exclusively under the Suits in Admiralty Act. This Act provides only two years for claimants to file suit, and also requires exhaustion of administrative remedies, 46 U. S. C. § 745 (1964 ed.). The Court of Claims

[1] 41 Stat. 526, as amended, 46 U. S. C. §§ 741–752 (1964 ed.).
[2] 24 Stat. 505, as amended, 28 U. S. C. §§ 1346, 1491 (1964 ed.).

granted the motions without opinion, simply citing to three unreported cases in which it had made similar dispositions. To uphold this transfer would bar those claims which accrued more than two years prior to the time the actions were filed. We granted certiorari, 382 U. S. 810, and reverse.

On its face, the Tucker Act permits all individuals with contractual claims against the Government to sue in the Court of Claims. The Suits in Admiralty Act similarly affords an open berth in the district courts, provided the claims are of a maritime nature. The question is which Act should be applicable to the claims brought here, and this in turn depends on whether these seafaring plaintiffs are more appropriately classified as federal workers or as mere seamen.

The Government takes the position that these employees are to be deprived of the liberal benefits of the longer limitations period available to all other government employees under the Tucker Act. This is so, the Government reasons, because for purposes of wage claims the petitioners' status as seamen overrides their acknowledged role as federal workers. In assuming this posture, the Government seeks the best of both worlds. Congress is depicted as ambivalent in treating these plaintiffs either as seamen or as federal employees depending on which status may redound more to the benefit of the Government's proprietary interest.

The Government acknowledges that the petitioners are governed by a patchwork pattern of federal statutes which encompass many facets of their economic welfare. With regard to so-called fringe benefits, pervasive government schemes provide for sick leave and vacation pay,[3]

[3] Annual and Sick Leave Act of 1951, 65 Stat. 679, as amended, 5 U. S. C. §§ 2061–2071 (1964 ed.).

and for death, health, medical and pension programs.[4] The petitioners' potential recovery for personal injuries is limited strictly by a workmen's compensation statute governing them as federal workers to the exclusion of both the Public Vessels Act,[5] *Johansen* v. *United States*, 343 U. S. 427, and the Suits in Admiralty Act, *Patterson* v. *United States*, 359 U. S. 495. By virtue of their governmental employment, the petitioners' right to join unions and to select bargaining representatives, unlike that of private seamen, exists only by express leave of the President, Exec. Order No. 10988, 27 Fed. Reg. 551 (1962), and they are forbidden, under pain of discharge, fine and imprisonment, from exercising or asserting the right to strike, 69 Stat. 624, 5 U. S. C. §§ 118p–118r (1964 ed.).

When it comes to wage claims the Government treats the petitioners, to their detriment, as seamen. The workers, however, have their wages fixed by federal statutes and regulations, like other federal employees. It is true that their rates of pay are geared to the prevailing wage scale in private shipping operations,[6] but this factor diminishes upon analysis. A host of federal workers, like these seamen, have their rates of pay so

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[4] Federal Employees Group Life Insurance Act of 1954, 68 Stat. 736, as amended, 5 U. S. C. §§ 2091–2103 (1964 ed.); Civil Service Retirement Act, 70 Stat. 743, as amended, 5 U. S. C. §§ 2251–2268 (1964 ed.); Federal Employees Health Benefits Act of 1959, 73 Stat. 709, 5 U. S. C. §§ 3001–3014 (1964 ed.).

[5] 43 Stat. 1112, as amended, 46 U. S. C. §§ 781–790 (1964 ed.).

[6] Section 202 (8) of the Classification Act of 1949, 63 Stat. 954, as amended, 5 U. S. C. § 1082 (8) (1964 ed.), provides in substance that workers on vessels shall have their compensation fixed and adjusted by federal agencies so far as consistent with the public interest in accordance with prevailing rates and practices in the maritime industry.

adjusted.[1] The petitioners, then, are essentially no different from the civil servants who deliver the mail, fight forest fires, construct public buildings, or who engage in countless other tasks which affect virtually every phase of the country's well-being. The wage scale of government-employed seamen is fixed by federal agencies; it is not automatically adjusted to the rate of pay prevalent in private industry, and in some cases the private pay rates are not easily ascertained. Further, these government employees—unlike the normal seamen—benefit from wage pay increases won in the private industry only prospectively and to a limited degree. Often in the maritime industry, private contract negotiations continue beyond the terminal date set in a collective bargaining agreement. When the agreement is signed, however, it generally provides that the private seamen receive the increased pay retroactively. The government seamen receive pay increases only from the actual date agreement is reached in the private sector. Therefore, the back pay claims are more appropriately catalogued on the government side of the ledger, although they may have a salty tang.

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[1] In 1962, Congress enacted the Federal Salary Reform Act, making an explicit declaration of policy that federal salary fixing should be comparable with private enterprise salary rates for the same levels of work, Act of Oct. 11, 1962, Pub. L. 87-793, 76 Stat. 841, 5 U. S. C. §§ 1171-1174 (1964 ed.). Pursuant to congressional direction, the President issued an Executive Order, Exec. Order No. 11173, Aug. 20, 1964, 29 Fed. Reg. 11999, taking full cognizance of the congressional policy enunciated in the Federal Salary Reform Act of 1962. So far as determining the compensation for wage board employees, as are these petitioners, Congress has evinced a similar concern, 5 U. S. C. §§ 1181-1184 (1964 ed.). Thus, the whole trend in government compensation is to draw individuals into public service by providing salaries at least comparable to those they would earn in entering private industry.

This inference as to congressional intent is re-enforced in considering the claims for overtime pay. Here there is a specific provision—Section 205 of the Federal Employees Pay Act of 1945 [8]—which fixes the ratio of overtime pay to the employees' basic pay. Congress has thus explicitly prescribed that overtime pay should be fixed in a uniform manner for all government employees, whether seamen or not. Furthermore, in determining the applicability of this uniform statutory requirement, the court will be interpreting the pay regulation of an executive department. This task is typically within the province and expertise of the Court of Claims.

We think the foregoing indicates that with respect to these wage claims, Congress thought of these petitioners more as government employees who happened to be seamen than as seamen who by chance worked for the Government. The remaining problems relate to specific legislative amendments. The Government approaches this by noting that the Suits in Admiralty Act specifically repealed the Tucker Act so far as the two conflicted. This may readily be conceded, see, *e. g.*, *Calmar S. S. Corp.* v. *United States*, 345 U. S. 445, 455–456; *Matson Navigation Co.* v. *United States*, 284 U. S. 352. Compare *Patterson* v. *United States*, 359 U. S. 495. From

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[8] 59 Stat. 295, 5 U. S. C. § 913 (1964 ed.), provides:

"Employees whose basic rate of compensation is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose shall be entitled to overtime pay in accordance with the provisions of section 673c of this title. The rate of compensation for each hour of overtime employment of any such employee shall be computed as follows: . . . ."

This provision, as does 5 U. S. C. § 673c (1964 ed.), gives government-employed seamen one and one-half times their basic pay for overtime pay.

this proposition it adduces the principle that exclusive admiralty jurisdiction is now so deeply woven in the fabric of the law that congressional action is required to overturn it, cf. *State Bd. of Ins.* v. *Todd Shipyards*, 370 U. S. 451, 458. This principle is sound where applicable, but such is not the case here.

The evolution of the law, both statutory and judicial, indicates that at least until 1960, the jurisdiction of the Court of Claims over government seamen's wage claims was unchallenged. We do not understand the Government to dispute this fact. For example, wage claims by federal employees were found to be expressly within the ambit of the Tucker Act in *Bruner* v. *United States*, 343 U. S. 112, 115. In *United States* v. *Townsley*, 343 U. S. 557, this Court affirmed a judgment against the Government for overtime wages in favor of a government-employed operator of a dredge. The Court of Claims had assumed jurisdiction over the suit, 101 Ct. Cl. 237, and the Government never disputed the issue. Subsequent cases are to the same effect.[9] It was on this line of precedent that the petitioners relied in bringing suit. This fact is worthy of mention to illustrate the impact upon claimants whose suits would otherwise be time-barred if we were now to hold that the Suits in Admiralty Act restricted all suits in cases like the present to the district courts, cf. *Brady* v. *Roosevelt S. S. Co.*, 317 U. S. 575, 581.

In 1960, Congress addressed itself to the jurisdictional overlap between the Tucker Act and the Suits in Admiralty Act. Its major aim was to empower the Court of Claims to transfer suits to the district courts when the

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[9] See, *e. g.*, *Hearne* v. *United States*, 107 Ct. Cl. 335, 68 F. Supp. 786, cert. denied, 331 U. S. 858; *Adams* v. *United States*, 141 Ct. Cl. 133; *Abbott* v. *United States*, 144 Ct. Cl. 712, 169 F. Supp. 523. See also *Continental Casualty Co.* v. *United States*, 156 F. Supp. 942 (Ct. Cl.).

latter had exclusive jurisdiction over them. This it accomplished by providing that when the transfer was made, the original filing in the Court of Claims would toll the applicable limitations period, Act of Sept. 13, 1960, Pub. L. 86–770, 74 Stat. 912, 28 U. S. C. § 1506. Simultaneously, Congress abolished the distinction between public and merchant vessels, a matter which had sorely confused attorneys and had caused misfilings in the past, S. Rep. No. 1894, 86th Cong., 2d Sess., pp. 3, 6. In amending the Suits in Admiralty Act, Congress also wanted to affirm the existing law that suits which were justiciable exclusively under it would be brought only in the district courts. The new § 2 of the Act, 46 U. S. C. § 742, in the words of the Senate Report, S. Rep. No. 1894, *supra*, at p. 2,

> "restates in brief and simple language the now existing exclusive jurisdiction conferred on the district courts, both on the admiralty and law sides, over cases against the United States which could be sued on in admiralty if private vessels, persons, or property were involved." [10]

The Government would have us believe that this oblique reference to private "persons" was designed to make inroads on the right of government employees to sue in the Court of Claims. We reject this argument. The legislative history surrounding this enactment con-

[10] As amended, 46 U. S. C. § 742 now provides in pertinent part: "In cases where if such vessel [owned by the United States] were privately owned or operated, or if such cargo were privately owned or possessed, or if a private person or property were involved, a proceeding in admiralty could be maintained, any appropriate nonjury proceeding in personam may be brought against the United States . . . . Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found . . . ."

tains no discussion whatever concerning claims brought by government-employed seamen. This is highly significant because of the active interest in nautical legislation generally taken by the maritime labor unions. If Congress had meant to lower the limitations period from six to two years, surely these unions would have been privy to the decision; this is all the more true when one considers that seamen are often stationed far away from their home ports and need a lengthy period in which to register their claims. If they were governed by the Maritime Act, they would be required not only to sue but exhaust administrative remedies as well within the shorter period, 46 U. S. C. § 745 (1964 ed.).

In effect, the Government asks us to repeal the former practice by implication. We have held in numerous cases that such a request bears a heavy burden of persuasion, *e. g.*, *Bulova Watch Co.* v. *United States*, 365 U. S. 753, 758; *Fourco Glass Co.* v. *Transmirra Corp.*, 353 U. S. 222, 228–229. Further, Congress had the opportunity in 1964 to deprive government-employed claimants of their rights when it amended the Tucker Act itself. Instead, Congress broadened the forums available to plaintiffs suing the Government for fees, salary or compensation for official services, giving the district courts concurrent jurisdiction with the Court of Claims in matters of less than $10,000, 78 Stat. 699, 28 U. S. C. § 1346 (d) (1964 ed.).

As in other jurisdictional questions involving intersecting statutes, there is no positive answer. We can do no more than to exercise our best judgment in interpreting the will of Congress. In this instance, we believe the traditional treatment of federal employees by the Government tips the balance in favor of Court of Claims jurisdiction. The Court of Claims possesses the expertise necessary to adjudicate government wage claims. It also serves as a centralized forum for developing the

law, particularly in large wage claim suits. These tasks have been its responsibility since 1887. In multi-party wage suits of large amounts, having one forum eliminates any problem of transferring venue from several district courts to one locale, see 28 U. S. C. § 1406 (1964 ed.). If we are here misconstruing the intent of Congress, it can easily set the matter to rest by explicit language. We therefore reverse and remand the suits to the Court of Claims for further proceedings.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 282.—October Term, 1965.

Harry J. Amell et al., Petitioners, *v.* United States.	On Writ of Certiorari to the United States Court of Claims.

[May 16, 1966.]

Mr. Justice Harlan, whom Mr. Justice Stewart joins, dissenting.

In my opinion a course of legal history, reflecting both decisions of this Court and congressional enactments, precludes the interpretation that is now placed on the Suits in Admiralty Act, 41 Stat. 525, as amended, 46 U. S. C. § 741 *et seq.* (1964 ed.).

I.

The Suits in Admiralty Act was enacted in 1920 to deal with problems created by the formation of a large government-owned merchant fleet during World War I. The Act established a method to sue the United States in admiralty that would protect the interests of libellants while at the same time prevent *in rem* attachments of government vessels during a possible emergency. See S. Rep. No. 223, 66th Cong., 1st Sess. (1919); H. R. Rep. No. 497, 66th Cong., 2d Sess. (1919); 58 Cong. Rec. 7317 (1919); 59 Cong. Rec. 1684–1688 (1920). Although the creation of this statutory procedure for suits in admiralty was occasioned by particular needs, the early cases, discussed below, held unmistakably, first, that the Act provided the exclusive admiralty remedy against the United States, and, second, that it was exclusive of all other remedies affording relief for an underlying claim cognizable in admiralty.

The Suits in Admiralty Act provides the procedure for suits against the United States or a government-owned

corporation "[i]n cases where if such vessel were privately owned or operated, or if such cargo were privately owned or possessed, or if a private person or property were involved, a proceeding in admiralty could be maintained . . . ." 46 U. S. C. § 742. A narrow construction of the statute was unanimously rejected in *Eastern Transp. Co.* v. *United States,* 272 U. S. 675, where the Court held that the Act made the Government amenable to any cause of action in admiralty, *in rem* or *in personam,* to which a private owner would be liable. 272 U. S., at 690. This view was reiterated and reinforced in *Fleet Corp.* v. *Rosenberg Bros.,* 276 U. S. 202. There the libellants sued the government-owned Fleet Corporation in admiralty. The cause was time barred under the Suits in Admiralty Act, but the respondents argued that the remedy provided by the Act did not preclude a nonstatutory suit in admiralty against the public corporation. The Court held that the Act provided the *exclusive* admiralty remedy against the United States or its agencies. It left open, however, the question whether "the Act also prevents a resort to any concurrent remedies against the United States . . . on like causes of action in the Court of Claims or in courts of law . . . ." 276 U. S., at 214.

This reservation was laid at rest in *Johnson* v. *Fleet Corp.,* 280 U. S. 320. There four cases were consolidated: two involved seamen's allegations of negligence; the third alleged breach of contract affecting cargo; the fourth alleged loss of cargo due to negligence. The suits were barred by the Suits in Admiralty statute of limitations, but it was argued that Tucker Act and common-law remedies were still available. The Court held squarely for the Government in spite of well-briefed arguments and some support from legislative history that the ad-

miralty jurisdiction was not meant to be exclusive in such cases.[1] Reviewing the structure of the Act and basic congressional intent, the Court stated that the Act's purposes would not be served "if suits under the Tucker Act and in the Court of Claims be allowed against the United States and actions at law in state and federal courts be permitted against the Fleet Corporation or other agents for the enforcement of the maritime causes of action covered by the Act." 280 U. S., at 327. The Court concluded "that the remedies given by the Act are exclusive in all cases where a libel might be filed under it." *Ibid.*

This interpretation of the Suits in Admiralty Act was subsequently recognized and ultimately adopted by the Congress, which on various occasions has amended the Act or passed supporting legislation premised on the exclusivity of the Act over all claims that might be heard in admiralty. Soon after the *Johnson* case, *supra,* was decided, the Congress acted to mitigate its effects on those who were barred by its two-year limitation. In an Act of June 30, 1932, 47 Stat. 420, § 5 of the Suits in Admiralty Act was amended to waive the two-year period for suitors who had filed timely actions elsewhere before the *Johnson* decision.[2] In 1950, in order to eliminate

[1] Legislative history bearing on this aspect of the question is meager, although one colloquy during the House Committee on the Judiciary hearings on this bill suggests that concurrent jurisdiction with the Court of Claims might have been contemplated in certain situations. Hearings before the House Committee on the Judiciary on the Attorney General's Substitute for S. 3076 and H. R. 7124, 66th Cong., 1st Sess., ser. 8, at 48 (1919).

[2] Again in 1950 Congress extended the limitations period to accommodate those employees who, in reliance upon a prior decision, *Hust* v. *Moore-McCormack Lines,* 328 U. S. 707, overruled in *Cosmopolitan Co.* v. *McAllister,* 337 U. S. 763, had not filed suit against the United States under the Suits in Admiralty Act for a tort com-

any remaining confusion, § 5 was again amended to codify the *Johnson* rule as applied to government agents, namely, "[t]hat where a remedy is provided by . . . [the Suits in Admiralty Act] it shall hereafter be exclusive of any other action by reason of the same subject matter against the agent or employee of the United States . . . ." 64 Stat. 1112, 46 U. S. C. § 745 (1964 ed). See S. Rep. No. 2535, 81st Cong., 2d Sess. (1950), quoted in note 2, *supra;* H. R. Rep. No. 1292, 81st Cong., 1st Sess. (1949).

The statutes affecting the Court of Claims directly were also altered by Congress to conform with the basic structure of the exclusive admiralty jurisdiction. In 1948 the Tucker Act was amended to strike the word "admiralty" from the scope of that court's jurisdiction. Act of June 25, 1948, c. 646, 62 Stat. 940, 28 U. S. C. § 1491 (1964 ed.).[3] In 1950, an Act was passed to facilitate transfers of admiralty actions from the Court of Claims to the federal district courts and to toll the running of the statute of limitations in such cases so that litigants who sued, incorrectly, in the Court of Claims would not be required to file a new suit in the district court which might by then be time-barred. Act of September 13, 1960, 74 Stat. 912, 28 U. S. C. § 1506 (1964

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mitted when a government-owned ship was being operated by a private company as general agent for the Government. 64 Stat. 1112, 46 U. S. C. § 745 (1964 ed.). The Senate report noted that "[t]o prevent future repetition of such mistakes the bill expressly restates the existing law that the remedy by suit against the United States is exclusive of every other type of action by reason of the same subject matter against the United States or against its employees or agents." S. Rep. No. 2535, 81st Cong., 2d Sess., 1 (1950).

[3] The House report noted: "the Court of Claims has no admiralty jurisdiction, but the Suits in Admiralty Act . . . vests exclusive jurisdiction over suits in admiralty against the United States in the district courts." H. R. Rep. No. 308, 80th Cong., 1st Sess., App. p. 138 (1947).

ed.). Recognition of the exclusive admiralty jurisdiction of the district courts prompted enactment of this statute. See H. R. Rep. No. 523, 86th Cong., 1st Sess. (1959); S. Rep. No. 1894, 86th Cong., 2d Sess. (1960).

II.

This survey of case-law and statutory development indicates quite clearly that the jurisdiction of the district courts is exclusive in actions falling within the purview of the Suits in Admiralty Act, and that the test for determining whether an action falls within that class is "whether a libel might be filed under [the Act]" *Johnson* v. *Fleet Corp., supra,* at 327, or in the words of the statute directly, whether "if such vessel were privately owned or operated . . . a proceeding in admiralty could be maintained." 46 U. S. C. § 742.

Until today the basic test for the Act's applicability has been a familiar historical one, for the statutory term "proceeding in admiralty" is quite obviously coextensive with its meaning in ordinary legal usage. In the case now before us, the question for the Court is whether the claim for back wages by these seamen would be heard by an admiralty court if their employer were a private person. The answer is clearly in the affirmative, see *Sheppard* v. *Taylor,* 5 Pet. 675; *Kossick* v. *United Fruit Co.,* 365 U. S. 731, 735. It is stated in 1 Benedict, Admiralty 124 (6th ed. Knauth 1940): "The mariners of a ship are commonly said to be wards of the admiralty. Their wages, their rights, their wrongs and injuries have always been a special subject of the admiralty jurisdiction." It is true that the claim against a private employer might also be litigated in a common-law court, see *Leon* v. *Galceran,* 11 Wall. 185; 1 Benedict, *supra,* at 35. But the fact that there is concurrent jurisdiction over such a claim in private litigation is irrelevant for purposes of a suit against the sovereign, for as shown

above, the Suits in Admiralty Act is exclusive over any action which "could be maintained in admiralty." This is indubitably such a claim.

III.

The Court, while recognizing "that the Suits in Admiralty Act specifically repealed the Tucker Act so far as the two conflicted," *ante*, p. 5, avoids the result compelled by prior interpretation of the Suits in Admiralty Act and conventional admiralty law, by formulating a new test for the statute's applicability. Instead of asking whether this suit is one traditionally within the scope of admiralty jurisdiction, it sees the inter-relation of the Tucker Act and the Suits in Admiralty Act as requiring an inquiry into the question whether the petitioners are more like federal employees than like mariners, and after weighing the factors involved concludes that they are more civil servants than seafarers. I believe this test presents a false basis for determining whether or not exclusive jurisdiction lies in admiralty and puts a mischievous gloss on the relevant statutes.

Obviously these petitioners are both federal employees *and* seamen. One label refers to their employer; the other to the type of work they perform. This dual classification might well be made of the status of employees in many private industries. A large corporation might have thousands of employees, some of whom are employed in maritime activities. Because of the evolution of our legal system these maritime employees can sue their employer in an admiralty court as well as at law; their land-based co-workers do not have that option. The fact that the contracts, pension rights, and other benefits and obligations may be similar for both types of employees is irrelevant for purposes of defining the admiralty court's jurisdiction over the claims of these maritime employees. Cf. *The Steam-Boat Thomas Jef-*

ferson, 10 Wheat. 428; *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50. The position of federal maritime employees should be no different. The argument of the Court showing that in many respects the rights of federal employees who are seamen are similar to the rights of federal employees who are not seamen, whatever its merits on its own terms, see Part IV, *infra*, does not negate the fact that the claims of these seamen are within the traditional scope of the admiralty jurisdiction. See *McCrea* v. *United States*, 294 U. S. 23, a claim for wages, *inter alia*, under the Suits in Admiralty Act.

Not only is the Court's approach based upon a false yardstick, but it contrives an impracticable test for applying a jurisdictional statute. The rule heretofore used for the application of the Suits in Admiralty Act has been that, absent any clear statutory exception,[4] it encompasses any claim that could have been brought before an admiralty court were the defendant a private shipper. Since the scope of the admiralty jurisdiction is long-established and generally well understood, suitors would normally know in what forum their cases should be brought. The Court's new test for determining the proper forum is whether the underlying cause of action is primarily of "a maritime nature." As the Court's opinion indicates, this inquiry can be resolved only after what in many instances will be a complicated and elusive process. Indeed, in this case, only after several pages of analysis is the Court able to determine that "with respect to these wage claims, Congress thought of these petitioners more as government employees who happened to

[4] Compare *Johansen* v. *United States*, 343 U. S. 427, and *Patterson* v. *United States*, 359 U. S. 495, in which it was held that the Federal Employees Compensation Act of 1916, 39 Stat. 742, 5 U. S. C. § 751 *et seq.* (1964 ed.), provided the sole remedy for seamen injured on board government-owned vessels, thus barring suits under the Suits in Admiralty Act.

be seamen than as seamen who by chance worked for the Government," *ante*, p. 5. Putting aside the fact that there is nothing to show that Congress ever contemplated such a "jurisdictional" standard, replacing the straightforward "admiralty jurisdiction" test by the unpredictable "primarily of a maritime nature" rule is bound to introduce confusion and uncertainty into determinations of the appropriateness of a particular forum, the very type of question that should have a reasonably definitive answer.

IV.

The Court quite obviously construes the Act as it does because it is reluctant to deprive federally employed seamen of the longer statute of limitations available under the Tucker Act. Apart from anything else, this can be accomplished, however, only at the expense of forfeiting other substantial advantages available under the Suits in Admiralty Act.

First, an admiralty court is likely to be better acquainted with many underlying questions involved in suits such as these, and to be more sensitive to the tradition that seamen are the "wards of the admiralty." For example, the Classification Act of 1949, 63 Stat. 954, as amended, 5 U. S. C. § 1082 (8) (1964 ed.), provides that federally employed crew members shall be compensated "as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry . . . ." One of the suits consolidated in this action raises the question of overtime payment for "port watch tours of duty," and the petitioner, citing the Classification Act, alleges that "prevailing rates" in the trade require "16 hours at overtime rates per 24 hour port watch tour of duty." Another complaint involves, *inter alia*, a naval rule regarding lunch periods where, due to the nature of the work, "it may not be administratively

desirable to allow a specified period of time off for lunch." Naval Civilian Personnel Instruction 610.2–1k. Questions involving such subject matter are best heard in admiralty.[5]

Second, venue under the Tucker Act, for suits over $10,000 and all suits involving pension rights, is limited to the Court of Claims. 28 U. S. C. § 1346 (a), (d) (1964 ed.). Three of the four suits consolidated here are above the $10,000 limit, and thus can only be brought in the District of Columbia. Of these three cases, two involve naval facilities at Fort Lauderdale, Florida. The interests of most maritime employees of the United States would probably be better served by allowing the more favorable venue provisions in admiralty.[6]

Third, interest provisions under the Suits in Admiralty Act are more favorable than under the Tucker Act. Under the latter statute interest runs at most from the date of judgment, 28 U. S. C. §§ 2411 (b), 2516 (1964 ed.), while in admiralty the court may award interest from the date the libel is filed. 46 U. S. C. §§ 743, 745 (1964 ed.). Greater court costs may also be awarded in admiralty. Compare 46 U. S. C. § 743 with 28 U. S. C. § 2412 (b) (1964 ed.).

Because of the Court's ruling today, all of these benefits are lost to *all* federally employed seamen, not merely

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[5] The Court's argument that this factor is offset by the peculiar expertise of the Court of Claims with respect to the nonmaritime components of government seamen wage claims is not persuasive. District courts too possess such expertise, born of their concurrent jurisdiction with the Court of Claims in government contract actions involving less than $10,000. 28 U. S. C. § 1346 (a) (1964 ed.).

[6] 46 U. S. C. § 742 provides that suits under the Suits in Admiralty Act "shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found."

to those involved in these cases. The untoward results to which this decision leads in themselves engender the most serious misgivings as to the soundness of the Court's ruling, albeit that it may be thought to produce a beneficent result in this particular instance.

I would affirm the judgment of the Court of Claims.